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SENATE BILL 558

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Ben D. Altamirano

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

**RELATING TO UNEMPLOYMENT COMPENSATION; AMENDING PROVISIONS OF
THE UNEMPLOYMENT COMPENSATION LAW TO INCREASE AND EXTEND
BENEFITS, DECREASE EMPLOYERS' CONTRIBUTIONS AND ELIMINATE
CERTAIN RESTRICTIONS ON ELIGIBILITY FOR BENEFITS; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969,
Chapter 213, Section 1, as amended by Laws 2000, Chapter 3,
Section 1 and also by Laws 2000, Chapter 7, Section 1) is
amended to read:**

**"51-1-4. MONETARY COMPUTATION OF BENEFITS--PAYMENT
GENERALLY. --**

**A. All benefits provided herein are payable from
the unemployment compensation fund. All benefits shall be paid**

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1 in accordance with [~~such regulations as~~] rules prescribed by
2 the secretary [~~may prescribe~~] through employment offices or
3 other agencies as the secretary [~~may~~] approves by general rule
4 [~~approve~~].

5 B. Weekly benefits shall be as follows:

6 (1) an individual's "weekly benefit amount" is
7 an amount equal to [~~one twenty-sixth of the total wages~~] fifty-
8 two and one-half percent of the average weekly wage for insured
9 work paid to [~~him~~] the individual in that quarter of [~~his~~] the
10 individual's base period in which total wages were highest. No
11 benefit as so computed may be less than ten percent or more
12 than fifty-two and one-half percent of the state's average
13 weekly wage for all insured work. The state's average weekly
14 wage shall be computed from all wages reported to the
15 department from employing units in accordance with
16 [~~regulations~~] rules of the secretary for the period ending June
17 30 of each calendar year divided by the total number of covered
18 employees divided by fifty-two, effective for the benefit years
19 commencing on or after the first Sunday of the following
20 calendar year. [~~Any such~~] An individual is not eligible to
21 receive benefits unless [~~he~~] the individual has wages in at
22 least two quarters of [~~his~~] that individual's base period. For
23 the purposes of this subsection, "total wages" means all
24 remuneration for insured work, including commissions and
25 bonuses and the cash value of all remuneration in a medium

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1 other than cash;

2 (2) ~~[each]~~ an eligible individual who is
3 unemployed in any week during which ~~[he]~~ the individual is in a
4 continued claims status shall be paid, with respect to ~~[such]~~
5 the week, a benefit in an amount equal to ~~[his]~~ the
6 individual's weekly benefit amount, less that part of the
7 wages, if any, or earnings from self-employment, payable to
8 ~~[him]~~ the individual with respect to such week ~~[which]~~ that is
9 in excess of one-fifth of ~~[his]~~ the individual's weekly benefit
10 amount. For purposes of this subsection only, "wages" includes
11 all remuneration for services actually performed in ~~[any]~~ a
12 week for which benefits are claimed, vacation pay for ~~[any]~~ a
13 period for which the individual has a definite return-to-work
14 date, wages in lieu of notice and back pay for loss of
15 employment but does not include payments through a court for
16 time spent in jury service;

17 (3) notwithstanding any other provision of
18 this section, ~~[each]~~ an eligible individual who, pursuant to a
19 plan financed in whole or in part by a base-period employer of
20 ~~[such]~~ the individual, is receiving a governmental or other
21 pension, retirement pay, annuity or any other similar periodic
22 payment that is based on the previous work of ~~[such]~~ the
23 individual and who is unemployed with respect to any week
24 ending subsequent to April 9, 1981 shall be paid with respect
25 to ~~[such]~~ the week, in accordance with ~~[regulations]~~ rules

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1 prescribed by the secretary, compensation equal to ~~[his]~~ the
2 individual's weekly benefit amount reduced, but not below zero,
3 by the prorated amount of ~~[such]~~ the pension, retirement pay,
4 annuity or other similar periodic payment that exceeds the
5 percentage contributed to the plan by the eligible individual.
6 The maximum benefit amount payable to ~~[such]~~ the eligible
7 individual shall be an amount not more than twenty-six times
8 his reduced weekly benefit amount. If payments referred to in
9 this section are being received by ~~[any]~~ an individual under
10 the federal Social Security Act, the division shall take into
11 account the individual's contribution and make no reduction in
12 the weekly benefit amount;

13 (4) in the case of a lump-sum payment of a
14 pension, retirement or retired pay, annuity or other similar
15 payment by a base-period employer that is based on the previous
16 work of ~~[such]~~ the individual, ~~[such]~~ the payment shall be
17 allocated, in accordance with ~~[regulations]~~ rules prescribed by
18 the secretary, and shall reduce the amount of unemployment
19 compensation paid, but not below zero, in accordance with
20 Paragraph (3) of this subsection; and

21 (5) the retroactive payment of a pension,
22 retirement or retired pay, annuity or any other similar
23 periodic payment as provided in Paragraphs (3) and (4) of this
24 subsection attributable to weeks during which an individual has
25 claimed or has been paid unemployment compensation shall be

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1 allocated to [~~such~~] those weeks and shall reduce the amount of
2 unemployment compensation for [~~such~~] those weeks, but not below
3 zero, by an amount equal to the prorated amount of [~~such~~] the
4 pension. Any overpayment of unemployment compensation benefits
5 resulting from the application of the provisions of this
6 paragraph shall be recovered from the claimant in accordance
7 with the provisions of Section 51-1-38 NMSA 1978.

8 C. An individual otherwise eligible for benefits
9 shall be paid for each week of unemployment, in addition to the
10 amount payable under Subsection B of this section, the sum of
11 fifteen dollars (\$15.00) for each unemancipated child, up to a
12 maximum of four and subject to the maximum stated in Subsection
13 D of this section, of the individual who is in fact dependent
14 upon and wholly or mainly supported by the individual and is:

15 (1) under the age of eighteen;

16 (2) under the age of eighteen and in the
17 individual's custody pending the adjudication of a petition
18 filed by the individual for the adoption of the child in a
19 court of competent jurisdiction; or

20 (3) under the age of eighteen and for whom the
21 individual is under a decree or order from a court of competent
22 jurisdiction required to contribute to the child's support and
23 for whom no other person is receiving allowances under the
24 Unemployment Compensation Law if the child is domiciled within
25 the United States or its territories or possessions, the

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1 payment to be withheld and paid pursuant to Section 51-1-37.1
2 NMSA 1978.

3 D. Dependency benefits shall not exceed fifty
4 percent of the individual's weekly benefit rate. The amount of
5 dependency benefits determined as of the beginning of an
6 individual's benefit year shall not be reduced for the duration
7 of the benefit year, but this provision does not prevent the
8 transfer of dependents' benefits from one spouse to another in
9 accordance with this subsection. If both the husband and wife
10 receive benefits with respect to a week of unemployment, only
11 one of them is entitled to a dependency allowance with respect
12 to a child. The division shall prescribe standards as to who
13 may receive a dependency allowance when both the husband and
14 wife are eligible to receive unemployment compensation
15 benefits. Dependency benefits shall not be paid unless the
16 individual submits documentation satisfactory to the division
17 establishing the existence of the claimed dependent. If the
18 provisions of this subsection are satisfied, an otherwise
19 eligible individual who has been appointed guardian of a
20 dependent child by a court of competent jurisdiction shall be
21 paid dependency benefits.

22 [C.—Any] E. An otherwise eligible individual is
23 entitled during any benefit year to a total amount of benefits
24 equal to whichever is the lesser of twenty-six times [his] the
25 individual's weekly benefit amount, plus any dependency benefit

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1 amount, or sixty percent of [~~his~~] the individual's wages for
2 insured work paid during [~~his~~] the individual's base period.

3 [~~D.—Any~~] F. A benefit as determined in Subsection
4 B or C of this section, if not a multiple of one dollar
5 (\$1.00), shall be rounded to the next lower multiple of one
6 dollar (\$1.00).

7 [~~E.—~~] G. The secretary may prescribe [~~regulations~~]
8 rules to provide for the payment of benefits that are due and
9 payable to the legal representative, dependents, relatives or
10 next of kin of claimants since deceased. These [~~regulations~~]
11 rules need not conform with the laws governing successions, and
12 the payment shall be deemed a valid payment to the same extent
13 as if made under a formal administration of the succession of
14 the claimant.

15 [~~F.—~~] H. The division, on its own initiative, may
16 reconsider a monetary determination whenever it is determined
17 that an error in computation or identity has occurred or that
18 wages of the claimant pertinent to such determination but not
19 considered have been newly discovered or that the benefits have
20 been allowed or denied on the basis of misrepresentation of
21 fact, but no redetermination shall be made after one year from
22 the date of the original monetary determination. Notice of a
23 redetermination shall be given to all interested parties and
24 shall be subject to an appeal in the same manner as the
25 original determination. In the event that an appeal involving

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1 an original monetary determination is pending at the time a
2 redetermination is issued, the appeal, unless withdrawn, shall
3 be treated as an appeal from [~~such~~] redetermination. "

4 Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969,
5 Chapter 213, Section 2, as amended by Laws 2000, Chapter 3,
6 Section 2 and also by Laws 2000, Chapter 7, Section 2) is
7 amended to read:

8 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS. --

9 A. An unemployed individual shall be eligible to
10 receive benefits with respect to any week only if [~~he~~] the
11 individual:

12 (1) has made a claim for benefits with respect
13 to such week in accordance with such [~~regulations~~] rules as the
14 secretary may prescribe;

15 (2) has registered for work at, and thereafter
16 continued to report at, an employment office in accordance with
17 such [~~regulations~~] rules as the secretary may prescribe, except
18 that the secretary may, by [~~regulation~~] rule, waive or alter
19 either or both of the requirements of this paragraph as to
20 individuals attached to regular jobs and as to such other types
21 of cases or situations with respect to which [~~he~~] the secretary
22 finds that compliance with such requirements would be
23 oppressive or would be inconsistent with the purposes of the
24 Unemployment Compensation Law. No such [~~regulation~~] rule shall
25 conflict with Subsection A of Section 51-1-4 NMSA 1978;

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1 (3) is able to work and is available for work
2 and is actively seeking permanent [~~and substantially~~] full-time
3 work or part-time work in accordance with Subsection I of
4 Section 51-1-42 NMSA 1978 and in accordance with the terms,
5 conditions and hours common in the occupation or business in
6 which the individual is seeking work, except that the secretary
7 may, by [~~regulation~~] rule, waive this requirement for
8 individuals who are on temporary layoff status from their
9 regular employment with an assurance from their employers that
10 the layoff shall not exceed four weeks or who have an express
11 offer in writing of substantially full-time work that will
12 begin within a period not exceeding four weeks;

13 (4) has been unemployed for a waiting period
14 of one week. [~~No~~] A week shall not be counted as a week of
15 unemployment for the purposes of this paragraph:

16 (a) unless it occurs within the benefit
17 year that includes the week with respect to which [~~he~~] the
18 individual claims payment of benefits;

19 (b) if benefits have been paid with
20 respect thereto; and

21 (c) unless the individual was eligible
22 for benefits with respect thereto as provided in this section
23 and Section 51-1-7 NMSA 1978, except for the requirements of
24 this subsection and of Subsection [~~E~~] D of Section 51-1-7 NMSA
25 1978;

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1 (5) has been paid wages in at least two
2 quarters of ~~[his]~~ the individual's base period;

3 (6) has reported to an office of the division
4 in accordance with the ~~[regulations]~~ rules of the secretary for
5 the purpose of an examination and review of the individual's
6 availability for and search for work, for employment
7 counseling, referral and placement and for participation in a
8 job finding or employability training and development program.
9 ~~[No]~~ An individual shall not be denied benefits under this
10 section for any week that ~~[he]~~ the individual is participating
11 in a job finding or employability training and development
12 program; and

13 (7) participates in reemployment services,
14 such as job search assistance services, if the division
15 determines that the individual is likely to exhaust regular
16 benefits and need reemployment services pursuant to a profiling
17 system established by the division, unless the division
18 determines that:

19 (a) the individual has completed such
20 services; or

21 (b) there is justifiable cause for the
22 individual's failure to participate in the services.

23 B. A benefit year as provided in Section 51-1-4
24 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
25 established; provided ~~[no]~~ an individual may not receive

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1 benefits in a benefit year unless, subsequent to the beginning
2 of the immediately preceding benefit year during which ~~he~~ the
3 individual received benefits, ~~he~~ the individual performed
4 service in "employment", as defined in Subsection F of Section
5 51-1-42 NMSA 1978, and earned remuneration for such service in
6 an amount equal to at least five times ~~his~~ the individual's
7 weekly benefit amount.

8 C. Benefits based on service in employment defined
9 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
10 51-1-43 NMSA 1978 are to be paid in the same amount, on the
11 same terms and subject to the same conditions as compensation
12 payable on the basis of other services subject to the
13 Unemployment Compensation Law; except that:

14 (1) benefits based on services performed in an
15 instructional, research or principal administrative capacity
16 for an educational institution shall not be paid for any week
17 of unemployment commencing during the period between two
18 successive academic years or terms or, when an agreement
19 provides for a similar period between two regular but not
20 successive terms, during such period or during a period of paid
21 sabbatical leave provided for in the individual's contract, to
22 any individual if ~~such~~ the individual performs such services
23 in the first of such academic years or terms and if there is a
24 contract or a reasonable assurance that ~~such~~ the individual
25 will perform services in any such capacity for any educational

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1 institution in the second of such academic years or terms;

2 (2) benefits based on services performed for
3 an educational institution other than in an instructional,
4 research or principal administrative capacity shall not be paid
5 for any week of unemployment commencing during a period between
6 two successive academic years or terms if [~~such~~] the services
7 are performed in the first of such academic years or terms and
8 there is a reasonable assurance that [~~such~~] the individual will
9 perform services for any educational institution in the second
10 of such academic years or terms. If compensation is denied to
11 [~~any~~] an individual under this paragraph and the individual was
12 not offered an opportunity to perform such services for the
13 educational institution for the second of such academic years
14 or terms, the individual shall be entitled to a retroactive
15 payment of benefits for each week for which the individual
16 filed a claim and certified for benefits in accordance with the
17 [~~regulations~~] rules of the division and for which benefits were
18 denied solely by reason of this paragraph;

19 (3) benefits shall be denied to any individual
20 for any week that commences during an established and customary
21 vacation period or holiday recess if [~~such~~] the individual
22 performs any services described in Paragraphs (1) and (2) of
23 this subsection in the period immediately before such period of
24 vacation or holiday recess and there is a reasonable assurance
25 that [~~such~~] the individual will perform any such services in

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1 the period immediately following such vacation period or
2 holiday recess;

3 (4) benefits shall not be payable on the basis
4 of services specified in Paragraphs (1) and (2) of this
5 subsection during the periods specified in Paragraphs (1), (2)
6 and (3) of this subsection to any individual who performed such
7 services in or to or on behalf of an educational institution
8 while in the employ of a state or local governmental
9 educational service agency or other governmental entity or
10 nonprofit organization; and

11 (5) for the purpose of this subsection, to the
12 extent permitted by federal law, "reasonable assurance" means a
13 reasonable expectation of employment in a similar capacity in
14 the second of such academic years or terms based upon a
15 consideration of all relevant factors, including the historical
16 pattern of reemployment in such capacity, a reasonable
17 anticipation that such employment will be available and a
18 reasonable notice or understanding that the individual will be
19 eligible for and offered employment in a similar capacity.

20 D. Paragraphs (1), (2), (3), (4) and (5) of
21 Subsection C of this section shall apply to services performed
22 for all educational institutions, public or private, for profit
23 or nonprofit, which are operated in this state or subject to an
24 agreement for coverage under the Unemployment Compensation Law
25 of this state, unless otherwise exempt by law.

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1 E. Notwithstanding any other provisions of this
2 section or Section 51-1-7 NMSA 1978, no otherwise eligible
3 individual is to be denied benefits for any week because [~~he~~]
4 the individual is in training or attending school on a full-
5 time basis with the approval of the division nor is [~~such~~] the
6 individual to be denied benefits by reason of application of
7 provisions in Paragraph (3) of Subsection A of this section or
8 [~~Subsection C~~] Paragraph (3) of Subsection A of Section 51-1-7
9 NMSA 1978 with respect to any week in which [~~he~~] the individual
10 is in training or attending school on a full-time basis with
11 the approval of the division. The secretary shall provide, by
12 [~~regulation~~] rule, standards for approved training and the
13 conditions for approving [~~such~~] training for claimants,
14 including any training approved or authorized for approval
15 pursuant to Section 236(a)(1) and (2) of the Trade Act of 1974,
16 as amended, or required to be approved as a condition for
17 certification of the state's Unemployment Compensation Law by
18 the United States secretary of labor.

19 F. Notwithstanding any other provisions of this
20 section, benefits shall not be payable on the basis of services
21 performed by an alien unless such alien is an individual who
22 was lawfully admitted for permanent residence at the time
23 [~~such~~] the services were performed, was lawfully present for
24 the purposes of performing [~~such~~] the services or was
25 permanently residing in the United States under color of law at

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1 the time [such] the services were performed, including an alien
2 who was lawfully present in the United States as a result of
3 the application of the provisions of Section 212(d)(5) of the
4 Immigration and Nationality Act; provided that:

5 (1) any information required of individuals
6 applying for benefits to determine their eligibility for
7 benefits under this subsection shall be uniformly required from
8 all applicants for benefits; and

9 (2) [no] an individual shall not be denied
10 benefits because of [his] the individual's alien status except
11 upon a preponderance of the evidence.

12 G. Notwithstanding any other provision of this
13 section, benefits shall not be paid to any individual on the
14 basis of any services substantially all of which consist of
15 participating in sports or athletic events or training or
16 preparing to so participate for any week that commences during
17 the period between two successive sport seasons, or similar
18 periods, if [such] the individual performed [such] the services
19 in the first of such seasons, or similar periods, and there is
20 a reasonable assurance that [such] the individual will perform
21 [such] the services in the latter of such seasons or similar
22 periods.

23 ~~[H. Students who are enrolled in a full-time course~~
24 ~~schedule in an educational or training institution or program,~~
25 ~~other than those persons in an approved vocational training~~

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1 ~~program in accordance with Subsection E of this section, shall~~
2 ~~not be eligible for unemployment benefits except as provided by~~
3 ~~regulations promulgated by the secretary.~~

4 ~~F.]~~ H. As used in this subsection, "seasonal ski
5 employee" means an employee who has not worked for a ski area
6 operator for more than six consecutive months of the previous
7 twelve months or nine of the previous twelve months. ~~[Any]~~ An
8 employee of a ski area operator who has worked for a ski area
9 operator for six consecutive months of the previous twelve
10 months or nine of the previous twelve months shall not be
11 considered a seasonal ski employee. The following benefit
12 eligibility conditions apply to a seasonal ski employee:

13 (1) except as provided in Paragraphs (2) and
14 (3) of this subsection, a seasonal ski employee employed by a
15 ski area operator on a regular seasonal basis shall be
16 ineligible for a week of unemployment benefits that commences
17 during a period between two successive ski seasons unless
18 ~~[such]~~ the individual establishes to the satisfaction of the
19 secretary that ~~[he]~~ the individual is available for and is
20 making an active search for permanent full-time work;

21 (2) a seasonal ski employee who has been
22 employed by a ski area operator during two successive ski
23 seasons shall be presumed to be unavailable for permanent new
24 work during a period after the second successive ski season
25 that ~~[he]~~ the individual was employed as a seasonal ski

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1 employee; and

2 (3) the presumption described in Paragraph (2)
3 of this subsection shall not arise as to any seasonal ski
4 employee who has been employed by the same ski area operator
5 during two successive ski seasons and has resided continuously
6 for at least twelve successive months and continues to reside
7 in the county in which the ski area facility is located.

8 [~~J.~~] I. Notwithstanding any other provision of this
9 section, an otherwise eligible individual shall not be denied
10 benefits for any week by reason of the application of Paragraph
11 (3) of Subsection A of this section because [~~he~~] the individual
12 is before any court of the United States or any state pursuant
13 to a lawfully issued summons to appear for jury duty. "

14 Section 3. Section 51-1-7 NMSA 1978 (being Laws 1936
15 (S.S.), Chapter 1, Section 5, as amended) is amended to read:

16 "51-1-7. DISQUALIFICATION FOR BENEFITS. --

17 A. An individual shall be disqualified for, and
18 shall not be eligible to receive, benefits:

19 [~~A.~~] (1) if it is determined by the division
20 that [~~he~~] the individual left [~~his~~] employment voluntarily
21 without good cause in connection with [~~his~~] the employment;
22 provided, however, that [~~no~~] a person shall not be denied
23 benefits under this [~~subsection~~] paragraph:

24 (a) solely on the basis of pregnancy or
25 the termination of pregnancy; or

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1 ~~[For purposes of this subsection, "employment" means the~~
2 ~~individual's last employer as defined by the regulations of the~~
3 ~~secretary and the provisions of the Subsection C of Section~~
4 ~~51-1-8 NMSA 1978. The disqualification shall continue for the~~
5 ~~duration of his unemployment and until he has earned wages in~~
6 ~~such bona fide employment other than self-employment as~~
7 ~~provided by regulation of the secretary in an amount equivalent~~
8 ~~to five times his weekly benefit amount otherwise payable;]~~

9 (b) because of domestic abuse evidenced
10 by medical documentation, legal documentation or a sworn
11 statement from the claimant;

12 ~~[B.] (2) if it is determined by the division~~
13 ~~that [he] the individual has been discharged for misconduct~~
14 ~~connected with [his] the individual's employment [For purposes~~
15 ~~of this subsection, "employment" means the individual's last~~
16 ~~employer as defined by the regulations of the secretary and the~~
17 ~~provisions of Subsection C of Section 51-1-8 NMSA 1978. The~~
18 ~~disqualification shall continue for the duration of his~~
19 ~~unemployment and until he has earned wages in such bona fide~~
20 ~~employment other than self-employment as provided by regulation~~
21 ~~of the secretary in an amount equivalent to five times his~~
22 ~~weekly benefit amount otherwise payable]; or~~

23 ~~[C.] (3) if it is determined by the division~~
24 ~~that [he] the individual has failed without good cause either~~
25 ~~to apply for available, suitable work when so directed or~~

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1 referred by the [~~employment security~~] division or to accept
2 suitable work when offered. [~~him~~—~~The disqualification shall~~
3 ~~include the week such failure occurred and shall continue for~~
4 ~~the duration of his unemployment and until he has earned wages~~
5 ~~in bona fide employment other than self-employment as provided~~
6 ~~by regulation of the secretary in an amount equivalent to five~~
7 ~~times his weekly benefit amount otherwise payable; provided~~
8 ~~that no more than one such disqualification shall be imposed~~
9 ~~upon any individual for failure to apply for or accept the same~~
10 ~~position, or a similar position, with the same employer, except~~
11 ~~upon a determination by the division of disqualification under~~
12 ~~Subsection D of this section.~~

13 (1)] B. In determining whether or not any work is
14 suitable for an individual pursuant to Paragraph (3) of
15 Subsection A of this section, the division shall consider the
16 degree of risk involved to [~~his~~] the individual's health,
17 safety and morals, [~~his~~] the individual's physical fitness
18 [~~and~~], prior training, approved training or full-time school
19 attendance, [~~his~~] experience [~~and~~], prior earnings, [~~his~~]
20 length of unemployment and prospects for securing local work in
21 [~~his~~] the individual's customary occupation and the distance of
22 available work from [~~his~~] the individual's residence. [~~(2)~~]
23 Notwithstanding any other provisions of the Unemployment
24 Compensation Law, no work shall be deemed suitable and benefits
25 shall not be denied under the Unemployment Compensation Law to

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1 any otherwise eligible individual for refusing to accept new
2 work under any of the following conditions:

3 [~~(a)~~] (1) if the position offered is vacant
4 due directly to a strike, lockout or other labor dispute;

5 [~~(b)~~] (2) if the wages, hours or other
6 conditions of the work offered are substantially less favorable
7 to the individual than those prevailing for similar work in the
8 locality; or

9 [~~(c)~~] (3) if, as a condition of being
10 employed, the individual would be required to join a company
11 union or to resign from or refrain from joining any bona fide
12 labor organizations.

13 [~~D.~~] C. An individual shall be disqualified for,
14 and shall not be eligible to receive, benefits for any week
15 with respect to which the division finds that [his] the
16 individual's unemployment is due to a labor dispute at the
17 factory, establishment or other premises at which [he] the
18 individual is or was last employed; provided that this
19 subsection shall not apply if it is shown to the satisfaction
20 of the division that:

21 (1) [~~he~~] the individual is not participating
22 in or directly interested in the labor dispute; and

23 (2) [~~he~~] the individual does not belong to a
24 grade or class of workers of which, immediately before the
25 commencement of the labor dispute, there were members employed

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1 at the premises at which the labor dispute occurs, any of whom
2 are participating in or directly interested in the dispute;
3 provided that if in any case separate branches of work [~~which~~
4 that are commonly conducted in separate businesses in separate
5 premises are conducted in separate departments of the same
6 premises, each such department shall, for the purposes of this
7 subsection, be deemed to be a separate factory, establishment
8 or other premises. [~~and~~

9 E.] D. An individual shall be disqualified for, and
10 shall not be eligible to receive, benefits for any week with
11 respect to which, or a part of which, [~~he~~] the individual has
12 received or is seeking, through any agency other than the
13 division, unemployment benefits under an unemployment
14 compensation law of another state or of the United States;
15 provided that if the appropriate agency of such other state or
16 of the United States finally determines that [~~he~~] the
17 individual is not entitled to such unemployment benefits, this
18 disqualification shall not apply.

19 E. A disqualification pursuant to Paragraph (1) or
20 (2) of Subsection A of this section shall continue for the
21 duration of the individual's unemployment and until the
22 individual has earned wages in bona fide employment other than
23 self-employment, as provided by rule of the secretary, in an
24 amount equivalent to five times the individual's weekly benefit
25 otherwise payable. A disqualification pursuant to Paragraph

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1 (3) of Subsection A of this section shall include the week the
2 failure occurred and shall continue for the duration of the
3 individual's unemployment and until the individual has earned
4 wages in bona fide employment other than self-employment, as
5 provided by rule of the secretary, in an amount equivalent to
6 five times the individual's weekly benefit amount otherwise
7 payable; provided that no more than one such disqualification
8 shall be imposed upon an individual for failure to apply for or
9 accept the same position, or a similar position, with the same
10 employer, except upon a determination by the division of
11 disqualification pursuant to Subsection C of this section.

12 F. As used in this section:

13 (1) "domestic abuse" means that term as
14 defined in Section 40-13-2 NMSA 1978; and

15 (2) "employment" means employment by the
16 individual's last employer as defined by rules of the
17 secretary."

18 Section 4. Section 51-1-11 NMSA 1978 (being Laws 1961,
19 Chapter 139, Section 3, as amended by Laws 2000, Chapter 3,
20 Section 3 and by Laws 2000, Chapter 7, Section 3) is amended to
21 read:

22 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE. --

23 A. The division shall maintain a separate account
24 for each contributing employer and shall credit ~~his~~ the
25 contributing employer's account with all contributions paid by

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1 ~~[hi-m]~~ that employer under the Unemployment Compensation Law.
2 Nothing in the Unemployment Compensation Law shall be construed
3 to grant ~~[any]~~ an employer or individuals in ~~[hi-s]~~ the
4 employer's service prior claims or rights to the amounts paid
5 by the employer into the fund.

6 B. Benefits paid to an individual shall be charged
7 against the accounts of ~~[hi-s]~~ the individual's base-period
8 employers on a pro rata basis according to the proportion of
9 ~~[hi-s]~~ the individual's total base-period wages received from
10 each employer, except that no benefits paid to a claimant as
11 extended benefits under the provisions of Section 51-1-48 NMSA
12 1978 shall be charged to the account of any base-period
13 employer who is not on a reimbursable basis and who is not a
14 governmental entity and, except as the secretary shall by
15 ~~[regulation]~~ rule prescribe otherwise, in the case of benefits
16 paid to an individual who:

17 (1) left the employ of a base-period employer
18 who is not on a reimbursable basis voluntarily without good
19 cause in connection with ~~[hi-s]~~ the individual's employment;

20 (2) was discharged from the employment of a
21 base-period employer who is not on a reimbursable basis for
22 misconduct connected with ~~[his-work]~~ the individual's
23 employment;

24 (3) is employed part time by a base-period
25 employer who is not on a reimbursable basis and who continues

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1 to furnish the individual the same part-time work while the
2 individual is separated from full-time work for a
3 nondisqualifying reason; or

4 (4) received benefits based upon wages earned
5 from a base-period employer who is not on a reimbursable basis
6 while attending approved training under the provisions of
7 Subsection E of Section 51-1-5 NMSA 1978.

8 C. The division shall not charge a contributing or
9 reimbursing base-period employer's account with any portion of
10 benefit amounts that the division can bill to or recover from
11 the federal government as either regular or extended benefits.

12 D. The division shall not charge a contributing
13 base-period employer's account with any portion of benefits
14 paid to an individual for dependent allowance or because the
15 individual to whom benefits are paid:

16 (1) separated from employment due to domestic
17 abuse; or

18 (2) is enrolled in approved training or is
19 attending school on a full-time basis.

20 [~~D.~~] E. All contributions to the fund shall be
21 pooled and available to pay benefits to any individual entitled
22 thereto, irrespective of the source of such contributions. The
23 standard rate of contributions payable by each employer shall
24 be five and four-tenths percent.

25 [~~E.—No~~] F. An employer's rate shall not be varied

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1 from the standard rate for any calendar year unless, as of the
2 computation date for that year, [~~his~~] the employer's account
3 has been chargeable with benefits throughout the preceding
4 thirty-six months, except that:

5 (1) the provisions of this subsection shall
6 not apply to governmental entities;

7 (2) [~~subsequent to December 31, 1984~~]
8 effective January 1, 2004, any employing unit that becomes an
9 employer subject to the payment of contributions under the
10 Unemployment Compensation Law or has been an employer subject
11 to the payment of contributions at a standard rate of two [~~and~~
12 ~~seven-tenths~~] percent through December 31, [~~1984~~] 2003 shall be
13 subject to the payment of contributions at the reduced rate of
14 two [~~and seven-tenths~~] percent until, as of the computation
15 date of a particular year, the employer's account has been
16 chargeable with benefits throughout the preceding thirty-six
17 months; [~~and~~]

18 (3) any individual, type of organization or
19 employing unit that acquires all or part of the trade or
20 business of another employing unit, pursuant to Paragraphs (2)
21 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
22 a reduced rate of contribution shall be entitled to the
23 transfer of the reduced rate to the extent permitted under
24 Subsection [~~G~~] H of this section;

25 (4) an employer that, at the time of

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1 establishing an account, is in business in another state or
2 states and that is not currently doing business in New Mexico
3 may elect, pursuant to Paragraph (5) of this subsection, to
4 receive a beginning contribution rate of two percent or a
5 contribution rate based on the current contribution rate
6 schedule in Paragraph (4) of Subsection I of this section,
7 whichever is lower, if:

8 (a) the employer has been in operation
9 in the other state or states for at least three years
10 immediately preceding the date of becoming a liable employer in
11 New Mexico, throughout which an individual in the employer's
12 employ could have received benefits if eligible; and

13 (b) the employer provides the
14 authenticated account history as defined by rule of the
15 secretary from information accumulated from operations in the
16 other state or all the other states to compute a current New
17 Mexico rate; and

18 (5) the election authorized in Paragraph (4)
19 of this subsection shall be made in writing within thirty days
20 after receiving notice of New Mexico liability and, if not made
21 timely, a two percent rate will be assigned; if the election is
22 made timely, the employer's account will receive the lesser of
23 the computed rate determined by the condition of the account
24 for the computation date immediately preceding the New Mexico
25 liable date, or the reduced rate of two percent; rates for

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1 subsequent years will be determined by the condition of the
2 account for the computation date.

3 [F-] G. The secretary shall, for the year 1942 and
4 for each calendar year thereafter, classify employers in
5 accordance with their actual experience in the payment of
6 contributions and with respect to benefits charged against
7 their accounts, with a view of fixing such contribution rates
8 as will reflect such benefit experience. [Each] An employer's
9 rate for any calendar year shall be determined on the basis of
10 [~~his~~] the employer's record and the condition of the fund as of
11 the computation date for such calendar year.

12 An employer may make voluntary payments in addition to the
13 contributions required under the Unemployment Compensation Law,
14 which shall be credited to [~~his~~] the employer's account in
15 accordance with department [~~regulation~~] rule. The voluntary
16 payments shall be included in the employer's account as of the
17 employer's most recent computation date if they are made on or
18 before the following March 1. Voluntary payments when accepted
19 from an employer shall not be refunded in whole or in part.

20 [G-] H. In the case of a transfer of an employing
21 enterprise, the experience history of the transferred
22 enterprise as provided in Subsection F of this section shall be
23 transferred from the predecessor employer to the successor
24 under the following conditions and in accordance with the
25 applicable [~~regulations~~] rules of the secretary:

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(1) Definitions:

(a) "employing enterprise" is a business activity engaged in by a contributing employing unit in which one or more persons have been employed within the current or the three preceding calendar quarters;

(b) "predecessor" means the owner and operator of an employing enterprise immediately prior to the transfer of such enterprise;

(c) "successor" means any individual or any type of organization that acquires an employing enterprise and continues to operate such business entity; and

(d) "experience history" means the experience rating record and reserve account, including the actual contributions, benefit charges and payroll experience of the employing enterprise.

(2) For the purpose of this section, two or more employers who are parties to or the subject of any transaction involving the transfer of an employing enterprise shall be deemed to be a single employer and the experience history of the employing enterprise shall be transferred to the successor employer if the successor employer has acquired by the transaction all of the business enterprises of the predecessor; provided that:

(a) all contributions, interest and penalties due from the predecessor employer have been paid;

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1 (b) notice of the transfer has been
2 given in accordance with the [~~regulations~~] rules of the
3 secretary within four years of the transaction transferring the
4 employing enterprise or the date of the actual transfer of
5 control and operation of the employing enterprise;

6 (c) in the case of the transfer of an
7 employing enterprise, the successor employer must notify the
8 division of the acquisition on or before the due date of the
9 successor employer's first wage and contribution report. If
10 the successor employer fails to notify the division of the
11 acquisition within this time limit, the division, when it
12 receives actual notice, shall effect the transfer of the
13 experience history and applicable rate of contribution
14 retroactively to the date of the acquisition, and the successor
15 shall pay a penalty of fifty dollars (\$50.00); and

16 (d) where the transaction involves only
17 a merger, consolidation or other form of reorganization without
18 a substantial change in the ownership and controlling interest
19 of the business entity, as determined by the secretary, the
20 limitations on transfers stated in Subparagraphs (a), (b) and
21 (c) of this paragraph shall not apply. [~~No~~] A party to a
22 merger, consolidation or other form of reorganization described
23 in this paragraph shall not be relieved of liability for any
24 contributions, interest or penalties due and owing from the
25 employing enterprise at the time of the merger, consolidation

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1 or other form of reorganization.

2 (3) The applicable experience history may be
3 transferred to the successor in the case of a partial transfer
4 of an employing enterprise if the successor has acquired one or
5 more of the several employing enterprises of a predecessor but
6 not all of the employing enterprises of the predecessor and
7 each employing enterprise so acquired was operated by the
8 predecessor as a separate store, factory, shop or other
9 separate employing enterprise and the predecessor, throughout
10 the entire period of ~~his~~ the contribution with liability
11 applicable to each enterprise transferred, has maintained and
12 preserved payroll records that, together with records of
13 contribution liability and benefit chargeability, can be
14 separated by the parties from the enterprises retained by the
15 predecessor to the satisfaction of the secretary or ~~his~~ the
16 secretary's delegate. A partial experience history transfer
17 will be made only if:

18 (a) the successor notifies the division
19 of the acquisition, in writing, not later than the due date of
20 the successor's first quarterly wage and contribution report
21 after the effective date of the acquisition;

22 (b) the successor files an application
23 provided by the division that contains the endorsement of the
24 predecessor within thirty days from the delivery or mailing of
25 such application by the division to the successor's last known

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1 address; and

2 (c) the successor files with the
3 application a Form ES-903A or its equivalent with a schedule of
4 the name and social security number of and the wages paid to
5 and the contributions paid for each employee for the three and
6 one-half year period preceding the computation date as defined
7 in Subparagraph (d) of Paragraph (3) of Subsection ~~[H]~~ I of
8 this section through the date of transfer or such lesser period
9 as the enterprises transferred may have been in operation. The
10 application and Form ES-903A shall be supported by the
11 predecessor's permanent employment records, which shall be
12 available for audit by the division. The application and Form
13 ES-903A shall be reviewed by the division and, upon approval,
14 the percentage of the predecessor's experience history
15 attributable to the enterprises transferred shall be
16 transferred to the successor. The percentage shall be obtained
17 by dividing the taxable payrolls of the transferred enterprises
18 for such three and one-half year period preceding the date of
19 computation or such lesser period as the enterprises
20 transferred may have been in operation by the predecessor's
21 entire payroll.

22 ~~[H.]~~ I. For each calendar year, adjustments of
23 contribution rates below the standard or reduced rate and
24 measures designed to protect the fund are provided ~~[as follows]~~
25 in Paragraphs (1) through (4) of this subsection.

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1 (1) The total assets in the fund and the total
2 of the last annual payrolls of all employers subject to
3 contributions as of the computation date for each year shall be
4 determined. These annual totals are here called "the fund" and
5 "total payrolls". For each year, the "reserve" of each
6 employer qualified under Subsection E of this section shall be
7 fixed by the excess of ~~[his]~~ the employer's total contributions
8 over total benefit charges computed as a percentage of ~~[his]~~
9 the employer's average payroll reported for contributions. The
10 determination of each employer's annual rate, computed as of
11 the computation date for each calendar year, shall be made by
12 matching ~~[his]~~ the employer's reserve as shown in the reserve
13 column with the corresponding rate ~~[shown in]~~ in the rate
14 column of the applicable rate schedule of the table provided in
15 Paragraph (4) of this subsection.

16 (2) Each employer's rate for each calendar
17 year commencing January 1, 1979 or thereafter shall be:

18 (a) the corresponding rate in schedule 0
19 of the table provided in Paragraph (4) of this subsection if
20 the fund equals at least three and seven-tenths percent of the
21 total payrolls;

22 ~~[(a)]~~ (b) the corresponding rate in
23 schedule 1 of the table provided in Paragraph (4) of this
24 subsection ~~[on the corresponding line as his reserve]~~ if the
25 fund ~~[equals at least]~~ has dropped to less than three and

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1 seven-tenths percent and not less than three and four-tenths
2 percent of the total payrolls;

3 ~~[(b)]~~ (c) the corresponding rate in
4 schedule 2 of the table provided in Paragraph (4) of this
5 subsection ~~[on the corresponding line]~~ if the fund has dropped
6 to less than three and four-tenths percent and not less than
7 two and seven-tenths percent of the total payrolls;

8 ~~[(c)]~~ (d) the corresponding rate in
9 schedule 3 of the table provided in Paragraph (4) of this
10 subsection ~~[on the corresponding line]~~ if the fund has dropped
11 to less than two and seven-tenths percent and not less than two
12 percent of the total payrolls;

13 ~~[(d)]~~ (e) the corresponding rate in
14 schedule 4 of the table provided in Paragraph (4) of this
15 subsection ~~[on the corresponding line]~~ if the fund has dropped
16 to less than two percent and not less than one and one-half
17 percent of the total payrolls;

18 ~~[(e)]~~ (f) the corresponding rate in
19 schedule 5 of the table provided in Paragraph (4) of this
20 subsection ~~[on the corresponding line]~~ if the fund has dropped
21 to less than one and one-half percent and not less than one
22 percent of the total payrolls; or

23 ~~[(f)]~~ (g) the corresponding rate in
24 schedule 6 of the table provided in Paragraph (4) of this
25 subsection ~~[on the corresponding line]~~ if the fund has dropped

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1 less than one percent of the total payrolls.

2 (3) As used in this section:

3 (a) "annual payroll" means the total
4 amount of remuneration from an employer for employment during a
5 twelve-month period ending on a computation date, and "average
6 payroll" means the average of the last three annual payrolls;

7 (b) "base-period wages" means the wages
8 of an individual for insured work during [~~his~~] the individual's
9 base period on the basis of which [~~his~~] the individual's
10 benefit rights were determined;

11 (c) "base-period employers" means the
12 employers of an individual during [~~his~~] the individual's base
13 period; and

14 (d) "computation date" for each calendar
15 year means the close of business on June 30 of the preceding
16 calendar year.

17 (4) Table of employer reserves and
18 contribution rate schedules:

19 Employer	<u>Contribution</u>	Contribution	Contribution	Contribution
20 Reserve	<u>Schedule 0</u>	Schedule 1	Schedule 2	Schedule 3
21 10.0% and over	<u>0.03%</u>	0.05%	0.1%	0.6%
22 9.0%- 9.9%	<u>0.06%</u>	0.1%	0.2%	0.9%
23 8.0%- 8.9%	<u>0.10%</u>	0.2%	0.4%	1.2%
24 7.0%- 7.9%	<u>0.30%</u>	0.4%	0.6%	1.5%
25 6.0%- 6.9%	<u>0.50%</u>	0.6%	0.8%	1.8%

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1	5.0%- 5.9%	<u>0.70%</u>	0.8%	1.1%	2.1%
2	4.0%- 4.9%	<u>1.00%</u>	1.1%	1.4%	2.4%
3	3.0%- 3.9%	<u>1.30%</u>	1.4%	1.7%	2.7%
4	2.0%- 2.9%	<u>1.60%</u>	1.7%	2.0%	3.0%
5	1.0%- 1.9%	<u>1.90%</u>	2.0%	2.4%	3.3%
6	0.9%- 0.0%	<u>2.40%</u>	2.4%	3.3%	3.6%
7	(- 0.1%) - (- 0.5%)	<u>3.30%</u>	3.3%	3.6%	3.9%
8	(- 0.5%) - (- 1.0%)	<u>4.20%</u>	4.2%	4.2%	4.2%
9	(- 1.0%) - (- 2.0%)	<u>5.00%</u>	5.0%	5.0%	5.0%
10	Under (- 2.0%)	<u>5.40%</u>	5.4%	5.4%	5.4%
11	Employer	Contri buti on	Contri buti on	Contri buti on	
12	Reserve	Schedul e 4	Schedul e 5	Schedul e 6	
13	10.0% and over	0.9%	1.2%	2.7%	
14	9.0%- 9.9%	1.2%	1.5%	2.7%	
15	8.0%- 8.9%	1.5%	1.8%	2.7%	
16	7.0%- 7.9%	1.8%	2.1%	2.7%	
17	6.0%- 6.9%	2.1%	2.4%	2.7%	
18	5.0%- 5.9%	2.4%	2.7%	3.0%	
19	4.0%- 4.9%	2.7%	3.0%	3.3%	
20	3.0%- 3.9%	3.0%	3.3%	3.6%	
21	2.0%- 2.9%	3.3%	3.6%	3.9%	
22	1.0%- 1.9%	3.6%	3.9%	4.2%	
23	0.9%- 0.0%	3.9%	4.2%	4.5%	
24	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%	
25	(- 0.5%) - (- 1.0%)	4.5%	4.8%	5.1%	

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1 (- 1. 0%) - (- 2. 0%) 5. 0% 5. 1% 5. 3%
2 Under (- 2. 0%) 5. 4% 5. 4% 5. 4%.

3 [~~H-~~] J. The division shall promptly notify each
4 employer of [~~his~~] the employer's rate of contributions as
5 determined for any calendar year pursuant to this section.
6 Such notification shall include the amount determined as the
7 employer's average payroll, the total of all [~~his~~] of the
8 employer's contributions paid on [~~his own~~] the employer's
9 behalf and credited to [~~his~~] the employer's account for all
10 past years and total benefits charged to [~~his~~] the employer's
11 account for all such years. Such determination shall become
12 conclusive and binding upon the employer unless, within thirty
13 days after the mailing of notice thereof to [~~his~~] the
14 employer's last known address or in the absence of mailing,
15 within thirty days after the delivery of such notice, the
16 employer files an application for review and redetermination,
17 setting forth [~~his~~] the employer's reason therefor. The
18 employer shall be granted an opportunity for a fair hearing in
19 accordance with [~~regulations~~] rules prescribed by the
20 secretary, but [~~no~~] an employer shall not have standing, in any
21 proceeding involving [~~his~~] the employer's rate of contributions
22 or contribution liability, to contest the chargeability to
23 [~~his~~] the employer's account of any benefits paid in accordance
24 with a determination, redetermination or decision pursuant to
25 Section 51-1-8 NMSA 1978, except upon the ground that the

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1 services on the basis of which such benefits were found to be
2 chargeable did not constitute services performed in employment
3 for ~~[him]~~ the employer and only in the event that ~~[he]~~ the
4 employer was not a party to such determination, redetermination
5 or decision, or to any other proceedings under the Unemployment
6 Compensation Law in which the character of such services was
7 determined. The employer shall be promptly notified of the
8 decision on ~~[his]~~ the employer's application for
9 redetermination, which shall become final unless, within
10 fifteen days after the mailing of notice thereof to ~~[his]~~ the
11 employer's last known address or in the absence of mailing,
12 within fifteen days after the delivery of such notice, further
13 appeal is initiated pursuant to Subsection D of Section 51-1-8
14 NMSA 1978.

15 ~~[J.]~~ K. The division shall provide each
16 contributing employer, within ninety days of the end of each
17 calendar quarter, a written determination of benefits
18 chargeable to ~~[his]~~ the employer's account. Such determination
19 shall become conclusive and binding upon the employer for all
20 purposes unless, within thirty days after the mailing of the
21 determination to ~~[his]~~ the employer's last known address or in
22 the absence of mailing, within thirty days after the delivery
23 of such determination, the employer files an application for
24 review and redetermination, setting forth ~~[his]~~ the employer's
25 reason therefor. The employer shall be granted an opportunity

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1 for a fair hearing in accordance with [~~regulations~~] rules
2 prescribed by the secretary, but [~~no~~] an employer shall not
3 have standing in any proceeding involving [~~his~~] the employer's
4 contribution liability to contest the chargeability to [~~his~~]
5 the employer's account of any benefits paid in accordance with
6 a determination, redetermination or decision pursuant to
7 Section 51-1-8 NMSA 1978, except upon the ground that the
8 services on the basis of which such benefits were found to be
9 chargeable did not constitute services performed in employment
10 for [~~him~~] the employer and only in the event that [~~he~~] the
11 employer was not a party to such determination, redetermination
12 or decision, or to any other proceedings under the Unemployment
13 Compensation Law in which the character of such services was
14 determined. The employer shall be promptly notified of the
15 decision on [~~his~~] the employer's application for
16 redetermination, which shall become final unless, within
17 fifteen days after the mailing of notice thereof to [~~his~~] the
18 employer's last known address or in the absence of mailing,
19 within fifteen days after the delivery of such notice, further
20 appeal is initiated pursuant to Subsection D of Section 51-1-8
21 NMSA 1978.

22 [~~K.~~] L. The contributions, together with interest
23 and penalties thereon imposed by the Unemployment Compensation
24 Law, shall not be assessed nor shall action to collect the same
25 be commenced more than four years after a report showing the

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1 amount of the contributions was due. In the case of a false or
2 fraudulent contribution report with intent to evade
3 contributions or a willful failure to file a report of all
4 contributions due, the contributions, together with interest
5 and penalties thereon, may be assessed or an action to collect
6 such contributions may be begun at any time. Before the
7 expiration of such period of limitation, the employer and the
8 secretary may agree in writing to an extension thereof and the
9 period so agreed on may be extended by subsequent agreements in
10 writing. In any case where the assessment has been made and
11 action to collect has been commenced within four years of the
12 due date of any contribution, interest or penalty, including
13 the filing of a warrant of lien by the secretary pursuant to
14 Section 51-1-36 NMSA 1978, such action shall not be subject to
15 any period of limitation.

16 ~~[E.]~~ M. The secretary shall correct any error in
17 the determination of an employer's rate of contribution during
18 the calendar year to which the erroneous rate applies,
19 notwithstanding that notification of the employer's rate of
20 contribution may have been issued and contributions paid
21 pursuant to the notification. Upon issuance by the division of
22 a corrected rate of contribution, the employer shall have the
23 same rights to review and redetermination as provided in
24 Subsection I of this section.

25 ~~[M.]~~ N. Any interest required to be paid on

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1 advances to this state's unemployment compensation fund under
2 Title 12 of the Social Security Act shall be paid in a timely
3 manner as required under Section 1202 of Title 12 of the Social
4 Security Act and shall not be paid, directly or indirectly, by
5 the state from amounts in the state's unemployment compensation
6 fund.

7 ~~[N. Notwithstanding the provisions of this section,~~
8 ~~the rate in schedule 1 of the table provided in Paragraph (4)~~
9 ~~of Subsection H of this section shall be applied for four~~
10 ~~calendar years beginning January 1, 1999.]"~~

11 Section 5. Section 51-1-19 NMSA 1978 (being Laws 1936
12 (S.S.), Chapter 1, Section 9, as amended) is amended to read:

13 "51-1-19. UNEMPLOYMENT COMPENSATION FUND. --

14 A. There is hereby established as a special fund,
15 separate and apart from all public money, or funds of this
16 state, an "unemployment compensation fund", which shall be
17 administered by the department exclusively for the purposes of
18 this section. ~~[This]~~ The fund shall consist of:

19 (1) all contributions collected and payments
20 in lieu of contributions collected or due pursuant to the
21 Unemployment Compensation Law;

22 (2) interest earned upon any money in the
23 fund;

24 (3) any property or securities acquired
25 through the use of money belonging to the fund;

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1 (4) all earnings of such property or
2 securities;

3 (5) all money received from the federal
4 unemployment account in the unemployment trust fund in
5 accordance with Title 12 of the Social Security Act, as
6 amended;

7 (6) all money credited to this state's account
8 in the unemployment trust fund pursuant to Section 903 of the
9 Social Security Act, as amended;

10 (7) all money received or due from the federal
11 government as reimbursements pursuant to Section 204 of the
12 Federal-State Extended Unemployment Compensation Act of 1970;
13 and

14 (8) all money received for the fund from any
15 other source. All money in the fund shall be mingled and
16 undivided.

17 B. The state treasurer shall be the treasurer and
18 custodian of the fund and shall administer such fund in
19 accordance with the directions of the department and shall
20 issue his checks upon it in accordance with such regulations as
21 the secretary may prescribe. He shall maintain, within the
22 fund, three separate accounts:

- 23 (1) a clearing account;
24 (2) an unemployment trust fund account; and
25 (3) a benefit account.

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1 C. All money payable to the fund upon receipt
2 thereof by the department shall be forwarded to the treasurer,
3 who shall immediately deposit it in the clearing account.
4 Refunds payable pursuant to Sections 51-1-36 and 51-1-42 NMSA
5 1978 shall be paid from the clearing account or the benefit
6 account upon checks issued by the treasurer under the direction
7 of the department. After clearance thereof, all money in the
8 clearing account, except as herein otherwise provided, shall be
9 immediately deposited with the secretary of the treasury of the
10 United States to the credit of the account of this state in the
11 unemployment trust fund, established and maintained pursuant to
12 Section 904 of the act of congress known as the Social Security
13 Act, as amended (42 U.S.C. Section 1104), any provisions of law
14 in this state relating to the deposits, administration, release
15 or disbursements of money in the possession or custody of this
16 state to the contrary notwithstanding. The benefit account
17 shall consist of all money requisitioned from this state's
18 account in the unemployment trust fund. Except as herein
19 otherwise provided, money in the clearing and benefit accounts
20 may be deposited by the treasurer, under the direction of the
21 secretary, in any bank or public depository in which general
22 funds of the state may be deposited, but no public deposit
23 insurance charge or premium shall be paid out of the fund.
24 Money in the clearing and benefit accounts shall not be
25 commingled with other state funds but shall be maintained in

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1 separate accounts on the books of the depository.

2 D. All of the money not deposited in the treasury
3 of the United States shall be subject to the general laws
4 applicable to the deposit of public money in the state; and
5 collateral pledged for this purpose shall be kept separate and
6 distinct from any collateral pledged to secure other funds of
7 this state.

8 E. The state treasurer shall be liable on his
9 official bond for the faithful performance of his duties in
10 connection with the unemployment compensation fund provided for
11 under this section. The liability on the official bond of the
12 state treasurer shall be effective immediately upon the
13 enactment of this provision, and such liability shall exist in
14 addition to the liability of any separate bond existent on the
15 effective date of this provision or ~~which~~ that may be given
16 in the future. All sums recovered for losses sustained by the
17 fund shall be deposited therein.

18 F. All money in the clearing account established
19 under this section is hereby appropriated for the purpose of
20 making refunds pursuant to Sections 51-1-36 and 51-1-42 NMSA
21 1978, and all money in the clearing account not needed for the
22 purpose of making the refunds shall be immediately paid ~~over~~
23 to the secretary of the treasury of the United States to the
24 credit of the account of this state in the unemployment trust
25 fund, and the money in the unemployment trust fund is hereby

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1 appropriated for the purposes of this section.

2 G. Money shall be requisitioned from this state's
3 account in the unemployment trust fund solely for the payment
4 of benefits and for the payment of refunds pursuant to Sections
5 51-1-36 and 51-1-42 NMSA 1978 in accordance with regulations
6 prescribed by the secretary, except that money credited to this
7 state's account pursuant to Section 903 of the Social Security
8 Act, as amended, shall be used exclusively as provided in
9 Subsection H of this section. The secretary shall, from time
10 to time, requisition from the unemployment trust fund such
11 amounts not exceeding the amounts standing to this state's
12 account therein, as he deems necessary for the payment of such
13 benefits and refunds for a reasonable future period. Upon
14 receipt thereof, the treasurer shall deposit such money in the
15 benefit account and shall issue his checks for the payment of
16 benefits solely from such benefit account. Expenditures of
17 such money in the benefit account and refunds from the benefit
18 account or the clearing account shall not be subject to any
19 provisions of law requiring specific appropriations or other
20 formal release by state officers of money in their custody.
21 All money shall be withdrawn from the fund only upon a warrant
22 issued by the department or its duly authorized agent upon the
23 treasurer, and the treasurer upon receipt of such warrants
24 shall issue his check against the fund in accordance with the
25 warrant of the secretary. Any balance of money requisitioned

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1 from the unemployment trust fund that remains unclaimed or
2 unpaid in the benefit account after the expiration of the
3 period for which such sums were requisitioned shall either be
4 deducted from estimates for, and may be utilized for, the
5 payment of benefits and refunds during succeeding periods, or
6 in the discretion of the secretary, shall be redeposited with
7 the secretary of the treasury of the United States, to the
8 credit of this state's account in the unemployment trust fund,
9 as provided in Subsection C of this section. All money in the
10 benefit account provided for hereinabove is hereby appropriated
11 for the payment of benefits and refunds as provided herein.

12 H. Money credited to the account of this state in
13 the unemployment trust fund by the secretary of the treasury of
14 the United States pursuant to Section 903 of the Social
15 Security Act may be requisitioned from this state's account or
16 used only for:

- 17 (1) the payment of benefits pursuant to
18 Subsection G of this section; and
19 (2) the payment of expenses incurred for the
20 administration of the Unemployment Compensation Law and the
21 federal Wagner-Peyser Act; provided that any money
22 requisitioned and used for the payment of expenses incurred for
23 the administration of the Unemployment Compensation Law and the
24 federal Wagner-Peyser Act must be authorized by the enactment
25 of a specific appropriation by the legislature that:

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1 (a) specifies the purpose for which such
2 money is appropriated and the amounts appropriated therefor;

3 (b) limits the period within which such
4 money may be obligated to a period ending not more than two
5 years after the date of the enactment of the appropriation law
6 except for amounts distributed to the state of New Mexico on
7 March 13, 2002 pursuant to Section 209 of the federal Temporary
8 Extended Unemployment Compensation Act of 2002;

9 (c) limits the amount [~~which~~] that may
10 be obligated to an amount which does not exceed the amount by
11 which 1) the aggregate of the amounts credited to the account
12 of this state pursuant to Section 903 of the Social Security
13 Act exceeds 2) the aggregate of the amounts used by the state
14 pursuant to this subsection and charged against the amounts
15 transferred to the account of this state; and

16 (d) notwithstanding the provisions of
17 [~~Subparagraph~~] Paragraph (1) of this subsection, money credited
18 with respect to federal fiscal years 1999, 2000 and 2001 shall
19 be used only for the administration of the Unemployment
20 Compensation Law.

21 I. Amounts credited to this state's account in the
22 unemployment trust fund under Section 903 of the Social
23 Security Act that are obligated for administration shall be
24 charged against transferred amounts at the exact time the
25 obligation is entered into. The appropriation, obligation and

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1 expenditure or other disposition of money appropriated under
2 Subsection H of this section shall be accounted for in
3 accordance with standards established by the United States
4 secretary of labor.

5 J. Money appropriated under Subsection H of this
6 section for payment of expenses of administration shall be
7 requisitioned as needed for payment of the obligations incurred
8 under such appropriations and, upon requisition, shall be
9 deposited in the unemployment compensation administration fund
10 but, until expended, shall remain a part of the unemployment
11 compensation fund for use only in accordance with the
12 conditions specified in Subsection H of this section,
13 notwithstanding any provision of Section 51-1-34 NMSA 1978.
14 Any money so deposited that will not be expended shall be
15 returned promptly to the account of the state in the
16 unemployment trust fund.

17 K. The provisions of Subsections A [~~B, C, D, E, F,~~
18 ~~G, H, I~~ and] through J of this section to the extent that they
19 relate to the unemployment trust fund, shall be operative only
20 so long as such unemployment trust fund continues to exist and
21 so long as the secretary of the treasury of the United States
22 continues to maintain for this state a separate book account of
23 all funds deposited therein by the state for benefit purposes,
24 together with this state's proportionate share of the earnings
25 of such unemployment trust fund from which no other state is

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1 permitted to make withdrawals. If and when such unemployment
2 trust fund ceases to exist, or such separate book account is no
3 longer maintained, all money, properties or securities therein
4 belonging to the unemployment compensation fund of this state
5 shall be transferred to the treasurer of the unemployment
6 compensation fund, who shall hold, invest, transfer, sell,
7 deposit and release such money, properties or securities in a
8 manner approved by the secretary, in accordance with the
9 provisions of this section; provided that such money shall be
10 invested in the following readily marketable classes of
11 securities; bonds or other interest-bearing obligations of the
12 United States and of the state; and provided further that such
13 investment shall at all times be so made that all the assets of
14 the fund shall always be readily convertible into cash when
15 needed for the payment of benefits. The treasurer shall
16 dispose of securities or other properties belonging to the
17 unemployment compensation fund only under the direction of the
18 secretary. "

19 Section 6. Section 51-1-42 NMSA 1978 (being Laws 1936
20 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

21 "51-1-42. DEFINITIONS. --As used in the Unemployment
22 Compensation Law:

23 A. "base period" means the first four of the last
24 five completed calendar quarters immediately preceding the
25 first day of an individual's benefit year, except that "base

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1 period" means for benefit years effective on or after
2 January 1, 2004 for an individual who does not have sufficient
3 wages in the base period as defined to qualify for benefits
4 pursuant to Section 51-1-5 NMSA 1978, the individual's base
5 period shall be the last four completed calendar quarters
6 immediately preceding the first day of the individual's benefit
7 year if that period qualifies the individual for benefits
8 pursuant to Section 51-1-5 NMSA 1978; provided that:

9 (1) wages that fall within the base period of
10 claims established pursuant to this subsection are not
11 available for reuse in qualifying for a subsequent benefit
12 year; and

13 (2) in the case of a combined-wage claim
14 pursuant to the arrangement approved by the federal secretary
15 of labor, the base period is that base period applicable under
16 the unemployment compensation law of the paying state;

17 B. "benefits" means the cash unemployment
18 compensation payments payable to an eligible individual
19 pursuant to Section 51-1-4 NMSA 1978 with respect to [~~his~~] the
20 individual's weeks of unemployment;

21 C. "contributions" means the money payments
22 required by Section 51-1-9 NMSA 1978 to be made into the fund
23 by an employer on account of having individuals performing
24 services for [~~him~~] the employer;

25 D. "employing unit" means any individual or type of

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1 organization, including any partnership, association,
2 cooperative, trust, estate, joint-stock company, agricultural
3 enterprise, insurance company or corporation, whether domestic
4 or foreign, or the receiver, trustee in bankruptcy, trustee or
5 successor thereof, household, fraternity or club, the legal
6 representative of a deceased person or any state or local
7 government entity to the extent required by law to be covered
8 as an employer, which has in its employ one or more individuals
9 performing services for it within this state. [~~All~~
10 ~~individuals~~] An individual performing services for [~~any~~] an
11 employing unit that maintains two or more separate
12 establishments within this state shall be deemed to be employed
13 by a single employing unit for all the purposes of the
14 Unemployment Compensation Law. [~~Individuals~~] An individual
15 performing services for [~~contractors, subcontractors or agents~~
16 ~~that are~~] a contractor, subcontractor or agent that is
17 performing work or services for an employing unit, as described
18 in this subsection, which is within the scope of the employing
19 unit's usual trade, occupation, profession or business, shall
20 be deemed to be in the employ of the employing unit for all
21 purposes of the Unemployment Compensation Law unless [~~such~~] the
22 contractor, subcontractor or agent is itself an employer within
23 the provisions of Subsection E of this section;

24 E. "employer" includes:

25 (1) [~~any~~] an employing unit [~~which~~] that:

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1 (a) unless otherwise provided in this
2 section, paid for service in employment as defined in
3 Subsection F of this section wages of four hundred fifty
4 dollars (\$450) or more in any calendar quarter in either the
5 current or preceding calendar year or had in employment, as
6 defined in Subsection F of this section, for some portion of a
7 day in each of twenty different calendar weeks during either
8 the current or the preceding calendar year, and irrespective of
9 whether the same individual was in employment in each such day,
10 at least one individual;

11 (b) for the purposes of Subparagraph (a)
12 of this paragraph, if any week includes both December 31 and
13 January 1, the days of that week up to January 1 shall be
14 deemed one calendar week and the days beginning January 1,
15 another such week; and

16 (c) for purposes of defining an
17 "employer" under Subparagraph (a) of this paragraph, the wages
18 or remuneration paid to individuals performing services in
19 employment in agricultural labor or domestic services as
20 provided in Paragraphs (6) and (7) of Subsection F of this
21 section shall not be taken into account; except that any
22 employing unit determined to be an employer of agricultural
23 labor under Paragraph (6) of Subsection F of this section shall
24 be an employer under Subparagraph (a) of this paragraph so long
25 as the employing unit is paying wages or remuneration for

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1 services other than agricultural services;

2 (2) any individual or type of organization
3 that acquired the trade or business or substantially all of the
4 assets thereof, of an employing unit that at the time of the
5 acquisition was an employer subject to the Unemployment
6 Compensation Law; provided that where such an acquisition takes
7 place, the secretary may postpone activating the separate
8 account pursuant to Subsection A of Section 51-1-11 NMSA 1978
9 until such time as the successor employer has employment as
10 defined in Subsection F of this section;

11 (3) [~~any~~] an employing unit that acquired all
12 or part of the organization, trade, business or assets of
13 another employing unit and that, if treated as a single unit
14 with [~~such~~] the other employing unit or part thereof, would be
15 an employer under Paragraph (1) of this subsection;

16 (4) [~~any~~] an employing unit not an employer by
17 reason of any other paragraph of this subsection:

18 (a) for which, within either the current
19 or preceding calendar year, service is or was performed with
20 respect to which such employing unit is liable for any federal
21 tax against which credit may be taken for contributions
22 required to be paid into a state unemployment fund; or

23 (b) [~~which~~] that, as a condition for
24 approval of the Unemployment Compensation Law for full tax
25 credit against the tax imposed by the Federal Unemployment Tax

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1 Act, is required, pursuant to ~~[such]~~ that act, to be an
2 "employer" under the Unemployment Compensation Law;

3 (5) ~~[any]~~ an employing unit that, having
4 become an employer under Paragraph (1), (2), (3) or (4) of this
5 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to
6 be an employer subject to the Unemployment Compensation Law;

7 (6) for the effective period of its election
8 pursuant to Section 51-1-18 NMSA 1978, any other employing unit
9 that has elected to become fully subject to the Unemployment
10 Compensation Law;

11 (7) ~~[any]~~ an employing unit for which any
12 services performed in its employ are deemed to be performed in
13 this state pursuant to an election under an arrangement entered
14 into in accordance with Subsection A of Section 51-1-50 NMSA
15 1978; and

16 (8) an Indian tribe as defined in 26 USCA
17 Section 3306(u) for which service in employment is performed;

18 F. "employment":

19 (1) means any service, including service in
20 interstate commerce, performed for wages or under any contract
21 of hire, written or oral, express or implied;

22 (2) means an individual's entire service,
23 performed within or both within and without this state if:

24 (a) the service is primarily localized
25 in this state with services performed outside the state being

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1 only incidental thereto; or

2 (b) the service is not localized in any
3 state but some of the service is performed in this state and:

4 1) the base of operations or, if there is no base of
5 operations, the place from which such service is directed or
6 controlled, is in this state; or 2) the base of operations or
7 place from which such service is directed or controlled is not
8 in any state in which some part of the service is performed but
9 the individual's residence is in this state;

10 (3) means services performed within this state
11 but not covered under Paragraph (2) of this subsection if
12 contributions or payments in lieu of contributions are not
13 required and paid with respect to such services under an
14 unemployment compensation law of any other state, the federal
15 government or Canada;

16 (4) means services covered by an election
17 pursuant to Section 51-1-18 NMSA 1978 and services covered by
18 an election duly approved by the secretary in accordance with
19 an arrangement pursuant to Paragraph (1) of Subsection A of
20 Section 51-1-50 NMSA 1978 shall be deemed to be employment
21 during the effective period of [~~such~~] the election;

22 (5) means services performed by an individual
23 for an employer for wages or other remuneration unless and
24 until it is established by a preponderance of evidence that:

25 (a) [~~such~~] the individual has been and

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1 will continue to be free from control or direction over the
2 performance of ~~[such]~~ the services both under ~~[his]~~ the
3 individual's contract of service and in fact;

4 (b) ~~[such]~~ the service is either outside
5 the usual course of business for which ~~[such]~~ the service is
6 performed or that such service is performed outside of all the
7 places of business of the enterprise for which such service is
8 performed; and

9 (c) ~~[such]~~ the individual is customarily
10 engaged in an independently established trade, occupation,
11 profession or business of the same nature as that involved in
12 the contract of service;

13 (6) means service performed after December 31,
14 1977 by an individual in agricultural labor as defined in
15 Subsection Q of this section if:

16 (a) ~~[such]~~ the service is performed for
17 an employing unit that: 1) paid remuneration in cash of twenty
18 thousand dollars (\$20,000) or more to individuals in ~~[such]~~
19 that employment during any calendar quarter in either the
20 current or the preceding calendar year; or 2) employed in
21 agricultural labor ten or more individuals for some portion of
22 a day in each of twenty different calendar weeks in either the
23 current or preceding calendar year, whether or not ~~[such]~~ the
24 weeks were consecutive, and regardless of whether ~~[such]~~ the
25 individuals were employed at the same time;

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1 (b) [~~such~~] the service is not performed
2 before January 1, 1980 by an individual who is an alien
3 admitted to the United States to perform service in
4 agricultural labor pursuant to Sections 214(c) and 101(15)(H)
5 of the federal Immigration and Nationality Act; and

6 (c) for purposes of this paragraph,
7 [~~any~~] an individual who is a member of a crew furnished by a
8 crew leader to perform service in agricultural labor for a farm
9 operator or other person shall be treated as an employee of
10 [~~such~~] the crew leader: 1) if [~~such~~] the crew leader meets the
11 requirements of a crew leader as defined in Subsection L of
12 this section; or 2) substantially all the members of [~~such~~] the
13 crew operate or maintain mechanized agricultural equipment that
14 is provided by the crew leader; and 3) the individuals
15 performing [~~such~~] the services are not, by written agreement or
16 in fact, within the meaning of Paragraph (5) of this
17 subsection, performing services in employment for the farm
18 operator or other person;

19 (7) means service performed after December 31,
20 1977 by an individual in domestic service in a private home,
21 local college club or local chapter of a college fraternity or
22 sorority for a person or organization that paid cash
23 remuneration of one thousand dollars (\$1,000) in any calendar
24 quarter in the current or preceding calendar year to
25 individuals performing such services;

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1 (8) means service performed after December 31,
2 1971 by an individual in the employ of a religious, charitable,
3 educational or other organization but only if the following
4 conditions are met:

5 (a) the service is excluded from
6 "employment" as defined in the Federal Unemployment Tax Act
7 solely by reason of Section 3306(c)(8) of that act; and

8 (b) the organization meets the
9 requirements of "employer" as provided in Subparagraph (a) of
10 Paragraph (1) of Subsection E of this section;

11 (9) means service of an individual who is a
12 citizen of the United States, performed outside the United
13 States, except in Canada, after December 31, 1971 in the employ
14 of an American employer, other than service that is deemed
15 "employment" under the provisions of Paragraph (2) of this
16 subsection or the parallel provisions of another state's law,
17 if:

18 (a) the employer's principal place of
19 business in the United States is located in this state;

20 (b) the employer has no place of
21 business in the United States, but: 1) the employer is an
22 individual who is a resident of this state; 2) the employer is
23 a corporation organized under the laws of this state; or 3) the
24 employer is a partnership or a trust and the number of the
25 partners or trustees who are residents of this state is greater

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1 than the number who are residents of any one other state; or

2 (c) none of the criteria of
3 Subparagraphs (a) and (b) of this paragraph are met, but the
4 employer has elected coverage in this state or, the employer
5 having failed to elect coverage in any state, the individual
6 has filed a claim for benefits, based on such service, under
7 the law of this state.

8 "American employer" for the purposes of this paragraph
9 means a person who is: 1) an individual who is a resident of
10 the United States; 2) a partnership if two-thirds or more of
11 the partners are residents of the United States; 3) a trust if
12 all of the trustees are residents of the United States; or 4) a
13 corporation organized under the laws of the United States or of
14 any state. For the purposes of this paragraph, "United States"
15 includes the United States, the District of Columbia, the
16 commonwealth of Puerto Rico and the Virgin Islands;

17 (10) means, notwithstanding any other
18 provisions of this subsection, service with respect to which a
19 tax is required to be paid under any federal law imposing a tax
20 against which credit may be taken for contributions required to
21 be paid into a state unemployment fund or which as a condition
22 for full tax credit against the tax imposed by the Federal
23 Unemployment Tax Act is required to be covered under the
24 Unemployment Compensation Law; [~~and~~]

25 (11) means service performed in the employ of

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1 an Indian tribe if:

2 (a) the service is excluded from
3 "employment" as defined in 26 USCA Section 3306(c) solely by
4 reason of 26 USCA Section 3306(c)(7); and

5 (b) the service is not otherwise
6 excluded from employment pursuant to the Unemployment
7 Compensation Law;

8 (12) does not include:

9 (a) service performed in the employ of:
10 1) a church or convention or association of churches; or 2) an
11 organization that is operated primarily for religious purposes
12 and that is operated, supervised, controlled or principally
13 supported by a church or convention or association of churches;

14 (b) service performed by a duly
15 ordained, commissioned or licensed minister of a church in the
16 exercise of his ministry or by a member of a religious order in
17 the exercise of duties required by such order;

18 (c) service performed by an individual
19 in the employ of his son, daughter or spouse, and service
20 performed by a child under the age of majority in the employ of
21 his father or mother;

22 (d) service performed in the employ of
23 the United States government or an instrumentality of the
24 United States immune under the constitution of the United
25 States from the contributions imposed by the Unemployment

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1 Compensation Law except that to the extent that the congress of
2 the United States shall permit states to require any
3 instrumentalities of the United States to make payments into an
4 unemployment fund under a state unemployment compensation act,
5 all of the provisions of the Unemployment Compensation Law
6 shall be applicable to such instrumentalities, and to service
7 performed for such instrumentalities in the same manner, to the
8 same extent and on the same terms as to all other employers,
9 employing units, individuals and services; provided that if
10 this state shall not be certified for any year by the secretary
11 of labor of the United States under Section 3304 of the federal
12 Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the
13 payments required of such instrumentalities with respect to
14 such year shall be refunded by the department from the fund in
15 the same manner and within the same period as is provided in
16 Subsection D of Section 51-1-36 NMSA 1978 with respect to
17 contributions erroneously collected;

18 (e) service performed in a facility
19 conducted for the purpose of carrying out a program of
20 rehabilitation for individuals whose earning capacity is
21 impaired by age or physical or mental deficiency or injury or
22 providing remunerative work for individuals who because of
23 their impaired physical or mental capacity cannot be readily
24 absorbed in the competitive labor market, by an individual
25 receiving ~~[such]~~ that rehabilitation or remunerative work;

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1 (f) service with respect to which
2 unemployment compensation is payable under an unemployment
3 compensation system established by an act of congress;

4 (g) service performed in the employ of a
5 foreign government, including service as a consular or other
6 officer or employee or a nondiplomatic representative;

7 (h) service performed by an individual
8 for a person as an insurance agent or as an insurance
9 solicitor, if all such service performed by [~~such~~] the
10 individual for [~~such~~] the person is performed for remuneration
11 solely by way of commission;

12 (i) service performed by an individual
13 under the age of eighteen in the delivery or distribution of
14 newspapers or shopping news, not including delivery or
15 distribution to any point for subsequent delivery or
16 distribution;

17 (j) service covered by an election duly
18 approved by the agency charged with the administration of any
19 other state or federal unemployment compensation law, in
20 accordance with an arrangement pursuant to Paragraph (1) of
21 Subsection A of Section 51-1-50 NMSA 1978 during the effective
22 period of [~~such~~] the election;

23 (k) service performed, as part of an
24 unemployment work-relief or work-training program assisted or
25 financed in whole or part by any federal agency or an agency of

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1 a state or political subdivision thereof, by an individual
2 receiving [~~such~~] the work relief or work training;

3 (l) service performed by an individual
4 who is enrolled at a nonprofit or public educational
5 institution that normally maintains a regular faculty and
6 curriculum and normally has a regularly organized body of
7 students in attendance at the place where its educational
8 activities are carried on as a student in a full-time program,
9 taken for credit at the institution that combines academic
10 instruction with work experience, if the service is an integral
11 part of such program and the institution has so certified to
12 the employer, except that this subparagraph shall not apply to
13 service performed in a program established for or on behalf of
14 an employer or group of employers;

15 (m) service performed in the employ of a
16 hospital, if the service is performed by a patient of the
17 hospital, or services performed by an inmate of a custodial or
18 penal institution for any employer;

19 (n) service performed by real estate
20 salesmen for others when the services are performed for
21 remuneration solely by way of commission;

22 (o) service performed in the employ of a
23 school, college or university if [~~such~~] the service is
24 performed by a student who is enrolled and is regularly
25 attending classes at [~~such~~] the school, college or university;

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1 (p) service performed by an individual
2 for a fixed or contract fee officiating at a sporting event
3 that is conducted by or under the auspices of a nonprofit or
4 governmental entity if that person is not otherwise an employee
5 of the entity conducting the sporting event;

6 (q) service performed for a private,
7 for-profit person or entity by an individual as a product
8 demonstrator or product merchandiser if the service is
9 performed pursuant to a written contract between that
10 individual and a person or entity whose principal business is
11 obtaining the services of product demonstrators and product
12 merchandisers for third parties, for demonstration and
13 merchandising purposes and the individual: 1) is compensated
14 for each job or the compensation is based on factors related to
15 the work performed; 2) provides the equipment used to perform
16 the service, unless special equipment is required and provided
17 by the manufacturer through an agency; 3) is responsible for
18 completion of a specific job and for any failure to complete
19 the job; 4) pays all expenses, and the opportunity for profit
20 or loss rests solely with the individual; and 5) is responsible
21 for operating costs, fuel, repairs and motor vehicle insurance.
22 For the purpose of this subparagraph, "product demonstrator"
23 means an individual who, on a temporary, part-time basis,
24 demonstrates or gives away samples of a food or other product
25 as part of an advertising or sales promotion for the product

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1 and who is not otherwise employed directly by the manufacturer,
2 distributor or retailer, and "product merchandiser" means an
3 individual who, on a temporary, part-time basis builds or
4 resets a product display and who is not otherwise directly
5 employed by the manufacturer, distributor or retailer; or

6 (r) service performed for a private,
7 for-profit person or entity by an individual as a landman if
8 substantially all remuneration paid in cash or otherwise for
9 the performance of the services is directly related to the
10 completion by the individual of the specific tasks contracted
11 for rather than to the number of hours worked by the
12 individual. For the purposes of this subparagraph, "landman"
13 means a land professional who has been engaged primarily in:
14 1) negotiating for the acquisition or divestiture of mineral
15 rights; 2) negotiating business agreements that provide for the
16 exploration for or development of minerals; 3) determining
17 ownership of minerals through the research of public and
18 private records; and 4) reviewing the status of title, curing
19 title defects and otherwise reducing title risk associated with
20 ownership of minerals; managing rights or obligations derived
21 from ownership of interests and minerals; or utilizing or
22 pooling of interest in minerals; and

23 (13) for the purposes of this subsection, if
24 the services performed during one-half or more of any pay
25 period by an individual for the person employing ~~him~~ the

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1 individual constitute employment, all the services of [~~such~~]
2 the individual for [~~such~~] the period shall be deemed to be
3 employment but, if the services performed during more than one-
4 half of any such pay period by an individual for the person
5 employing [~~him~~] the individual do not constitute employment,
6 then none of the services of [~~such~~] the individual for [~~such~~]
7 the period shall be deemed to be employment. As used in this
8 paragraph, the term "pay period" means a period, of not more
9 than thirty-one consecutive days, for which a payment of
10 remuneration is ordinarily made to the individual by the person
11 employing [~~him~~] the individual. This paragraph shall not be
12 applicable with respect to services performed in a pay period
13 by an individual for the person employing [~~him~~] the individual
14 where any of such service is excepted by Subparagraph (f) of
15 Paragraph (12) of this subsection;

16 G. "employment office" means a free public
17 employment office, or branch thereof, operated by this state or
18 maintained as a part of a state-controlled system of public
19 employment offices;

20 H. "fund" means the unemployment compensation fund
21 established by the Unemployment Compensation Law to which all
22 contributions and payments in lieu of contributions required
23 under the Unemployment Compensation Law and from which all
24 benefits provided under the Unemployment Compensation Law shall
25 be paid;

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1 I. "unemployment" means, with respect to an
2 individual, any week during which [~~he~~] the individual performs
3 no services and with respect to which no wages are payable to
4 [~~him~~] the individual and during which [~~he~~] the individual is
5 not engaged in self-employment or receives an award of back pay
6 for loss of employment. The secretary shall prescribe by
7 [~~regulation~~] rule what constitutes part-time and intermittent
8 employment, partial employment and the conditions under which
9 individuals engaged in such employment are eligible for partial
10 unemployment benefits, but no individual who is otherwise
11 eligible, shall be deemed ineligible for benefits solely for
12 the reason that the individual seeks, applies for or accepts
13 only part-time work, instead of full-time work, if the part-
14 time work is for at least twenty hours per week;

15 J. "state", when used in reference to any state
16 other than New Mexico, includes, in addition to the states of
17 the United States, the District of Columbia, the commonwealth
18 of Puerto Rico and the Virgin Islands;

19 K. "unemployment compensation administration fund"
20 means the fund established by Subsection A of Section 51-1-34
21 NMSA 1978 from which administrative expenses under the
22 Unemployment Compensation Law shall be paid. "Employment
23 security department fund" means the fund established by
24 Subsection B of Section 51-1-34 NMSA 1978 from which certain
25 administrative expenses under the Unemployment Compensation Law

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1 shall be paid;

2 L. "crew leader" means a person who:

3 (1) holds a valid certificate of registration
4 as a crew leader or farm labor contractor under the federal
5 Migrant and Seasonal Agricultural Worker Protection Act;

6 (2) furnishes individuals to perform services
7 in agricultural labor for any other person;

8 (3) pays, either on [~~his~~] the crew leader's
9 own behalf or on behalf of such other person, the individuals
10 so furnished by [~~him~~] the crew leader for service in
11 agricultural labor; and

12 (4) has not entered into a written agreement
13 with the other person for whom [~~he~~] the crew leader furnishes
14 individuals in agricultural labor that [~~such~~] the individuals
15 will be the employees of the other person;

16 M "week" means such period of seven consecutive
17 days, as the secretary may by [~~regulation~~] rule prescribe. The
18 secretary may by [~~regulation~~] rule prescribe that a week shall
19 be deemed to be "in", "within" or "during" the benefit year
20 that includes the greater part of such week;

21 N. "calendar quarter" means the period of three
22 consecutive calendar months ending on March 31, June 30,
23 September 30 or December 31;

24 O. "insured work" means services performed for
25 employers who are covered under the Unemployment Compensation

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1 Law;

2 P. "benefit year" with respect to [~~any~~] an
3 individual means the one-year period beginning with the first
4 day of the first week of unemployment with respect to which the
5 individual first files a claim for benefits in accordance with
6 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the
7 one-year period beginning with the first day of the first week
8 of unemployment with respect to which the individual next files
9 such a claim for benefits after the termination of [~~his~~] the
10 individual's last preceding benefit year; provided that at the
11 time of filing such a claim the individual has been paid the
12 wage required under Paragraph (5) of Subsection A of Section
13 51-1-5 NMSA 1978;

14 Q. "agricultural labor" includes all services
15 performed:

16 (1) on a farm, in the employ of [~~any~~] a
17 person, in connection with cultivating the soil or in
18 connection with raising or harvesting [~~any~~] an agricultural or
19 horticultural commodity, including the raising, shearing,
20 feeding, caring for, training and management of livestock,
21 bees, poultry and fur-bearing animals and wildlife;

22 (2) in the employ of the owner or tenant or
23 other operator of a farm, in connection with the operation,
24 management, conservation or maintenance of [~~such~~] the farm and
25 its tools and equipment, if the major part of [~~such~~] the

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1 service is performed on a farm;

2 (3) in connection with the operation or
3 maintenance of ditches, canals, reservoirs or waterways used
4 exclusively for supplying and storing water for farming
5 purposes when such ditches, canals, reservoirs or waterways are
6 owned and operated by the farmers using the water stored or
7 carried therein; and

8 (4) in handling, planting, drying, packing,
9 packaging, processing, freezing, grading, storing or delivery
10 to storage or to market or to a carrier for transportation to
11 market any agricultural or horticultural commodity but only if
12 [~~such~~] the service is performed as an incident to ordinary
13 farming operations. The provisions of this paragraph shall not
14 be deemed to be applicable with respect to service performed in
15 connection with commercial canning or commercial freezing or in
16 connection with any agricultural or horticultural commodity
17 after its delivery to a terminal market for distribution for
18 consumption.

19 As used in this subsection, the term "farm" includes
20 stock, dairy, poultry, fruit, fur-bearing animal and truck
21 farms, plantations, ranches, nurseries, greenhouses, ranges and
22 orchards;

23 R. "payments in lieu of contributions" means the
24 money payments made into the fund by an employer pursuant to
25 the provisions of Subsection [A] B of Section 51-1-13 NMSA 1978

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1 or Subsection E of Section 51-1-59 NMSA 1978;

2 S. "department" means the labor department; and

3 T. "wages" means all remuneration for services,
4 including commissions and bonuses and the cash value of all
5 remuneration in any medium other than cash. The reasonable
6 cash value of remuneration in any medium other than cash shall
7 be established and determined in accordance with ~~[regulations]~~
8 rules prescribed by the secretary; provided that the term
9 "wages" shall not include:

10 (1) subsequent to December 31, 1977, that part
11 of the remuneration in excess of the base wage as determined by
12 the secretary for each calendar year. The base wage upon which
13 contribution shall be paid during any calendar year shall be
14 sixty percent of the state's average annual earnings computed
15 by the division by dividing total wages reported to the
16 division by contributing employers for the second preceding
17 calendar year before the calendar year the computed base wage
18 becomes effective by the average annual employment reported by
19 contributing employers for the same period rounded to the next
20 higher multiple of one hundred dollars (\$100); provided that
21 the base wage so computed for any calendar year shall not be
22 less than seven thousand dollars (\$7,000). Wages paid by an
23 employer to an individual in his employ during any calendar
24 year in excess of the base wage in effect for that calendar
25 year shall be reported to the department but shall be exempt

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1 from the payment of contributions unless such wages paid in
2 excess of the base wage become subject to tax under a federal
3 law imposing a tax against which credit may be taken for
4 contributions required to be paid into a state unemployment
5 fund;

6 (2) the amount of any payment with respect to
7 services performed after June 30, 1941 to or on behalf of an
8 individual in ~~[its]~~ the employ of an employing unit under a
9 plan or system established by ~~[an]~~ the employing unit that
10 makes provision for individuals in its employ generally or for
11 a class or classes of ~~[such]~~ individuals, including any amount
12 paid by an employing unit for insurance or annuities, or into a
13 fund, to provide for any ~~[such]~~ payment, on account of:

14 (a) retirement if ~~[such]~~ the payments
15 are made by an employer to or on behalf of ~~[any]~~ an employee
16 under a simplified employee pension plan that provides for
17 payments by an employer in addition to the salary or other
18 remuneration normally payable to ~~[such]~~ the employee or class
19 of ~~[such]~~ employees and does not include any payments that
20 represent deferred compensation or other reduction of an
21 employee's normal taxable wages or remuneration or any payments
22 made to a third party on behalf of an employee as part of an
23 agreement of deferred remuneration;

24 (b) sickness or accident disability if
25 ~~[such]~~ the payments are received under a workers' compensation

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1 or occupational disease disablement law;

2 (c) medical and hospitalization expenses
3 in connection with sickness or accident disability; or

4 (d) death; provided the individual in
5 its employ has not the option to receive, instead of provision
6 for ~~[such]~~ the death benefit, any part of such payment, or, if
7 such death benefit is insured, any part of the premiums or
8 contributions to premiums paid by ~~[his]~~ the individual's
9 employing unit and has not the right under the provisions of
10 the plan or system or policy of insurance providing for ~~[such]~~
11 the death benefit to assign ~~[such]~~ the benefit, or to receive a
12 cash consideration in lieu of ~~[such]~~ the benefit either upon
13 ~~[his]~~ the individual's withdrawal from the plan or system
14 providing for ~~[such]~~ the benefit or upon termination of ~~[such]~~
15 the plan or system or policy of insurance or of ~~[his]~~ the
16 individual's service with ~~[such]~~ the employing unit;

17 (3) remuneration for agricultural labor paid
18 in any medium other than cash;

19 (4) ~~[any]~~ a payment made to, or on behalf of,
20 an employee or an employee's beneficiary under a cafeteria plan
21 within the meaning of Section 125 of the federal Internal
22 Revenue Code of 1986;

23 (5) ~~[any]~~ a payment made, or benefit furnished
24 to or for the benefit of an employee if at the time of ~~[such]~~
25 the payment or such furnishing it is reasonable to believe that

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1 the employee will be able to exclude ~~[such]~~ the payment or
2 benefit from income under Section 129 of the federal Internal
3 Revenue Code of 1986;

4 (6) ~~[any]~~ a payment made by an employer to a
5 survivor or the estate of a former employee after the calendar
6 year in which ~~[such]~~ the employee died;

7 (7) ~~[any]~~ a payment made to, or on behalf of,
8 an employee or ~~[his]~~ the employee's beneficiary under an
9 arrangement to which Section 408(p) of the federal Internal
10 Revenue Code of 1986 applies, other than any elective
11 contributions under Paragraph (2)(A)(i) of that section;

12 (8) ~~[any]~~ a payment made to or for the benefit
13 of an employee if at the time of ~~[such]~~ the payment it is
14 reasonable to believe that the employee will be able to exclude
15 ~~[such]~~ the payment from income under Section 106 of the federal
16 Internal Revenue Code of 1986; or

17 (9) the value of any meals or lodging
18 furnished by or on behalf of the employer if at the time ~~[such]~~
19 the benefit is provided it is reasonable to believe that the
20 employee will be able to exclude such items from income under
21 Section 119 of the federal Internal Revenue Code of 1986."

22 Section 7. Section 51-1-48 NMSA 1978 (being Laws 1971,
23 Chapter 209, Section 7, as amended) is amended to read:

24 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--

25 A. As used in this section, unless the context

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1 clearly requires otherwise, [~~A.~~] "extended benefit period"
2 means a period [~~which~~] that:

3 (1) begins with the third week after a week
4 for which there is a state "on" indicator;

5 (2) ends with either of the following weeks,
6 whichever occurs later:

7 (a) the third week after the first week
8 for which there is a state "off" indicator; or

9 (b) the thirteenth consecutive week of
10 such period; and

11 (3) [~~provided that no extended benefit period~~
12 ~~may~~] does not begin by reason of a state "on" indicator before
13 the fourteenth week following the end of a prior extended
14 benefit period [~~which~~] that was in effect with respect to this
15 state.

16 [~~B. There is a "state 'on' indicator" for this~~
17 ~~state for a week if the secretary determines, in accordance~~
18 ~~with the regulations of the United States secretary of labor,~~
19 ~~that for the period consisting of such week and the immediately~~
20 ~~preceding twelve weeks, the rate of insured unemployment (not~~
21 ~~seasonally adjusted) under this section:~~

22 (1) ~~equalled or exceeded five percent or~~
23 ~~equalled or exceeded one hundred twenty percent of the average~~
24 ~~of such rates for the corresponding thirteen-week period ending~~
25 ~~in each of the preceding two calendar years and equalled or~~

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1 ~~exceeded four percent; provided that for weeks of unemployment~~
2 ~~beginning after September 25, 1982, the provisions of~~
3 ~~subparagraph (2) of this subsection shall apply in determining~~
4 ~~a state "on" indicator; and~~

5 ~~(2) for weeks beginning after September 25,~~
6 ~~1982, equaled or exceeded six percent or equaled or exceeded~~
7 ~~one hundred twenty percent of the average of such rates for the~~
8 ~~corresponding thirteen-week period ending in each of the~~
9 ~~preceding two calendar years and equaled or exceeded five~~
10 ~~percent.~~

11 ~~C. There is a "state 'off' indicator" for this~~
12 ~~state for a week if the secretary determines, in accordance~~
13 ~~with the regulations of the United States secretary of labor,~~
14 ~~that for the period consisting of such week and the immediately~~
15 ~~preceding twelve weeks, the rate of insured unemployment (not~~
16 ~~seasonally adjusted) under this section:~~

17 ~~(1) was less than one hundred twenty percent~~
18 ~~of the average of such rates for the corresponding thirteen-~~
19 ~~week period ending in each of the preceding two calendar years;~~
20 ~~or~~

21 ~~(2) was less than four percent or, for weeks~~
22 ~~beginning after September 25, 1982, was less than five~~
23 ~~percent.]~~

24 B. There is a "state 'on' indicator" for this state
25 for a week if the rate of insured unemployment not seasonally

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1 adjusted under this section for the period consisting of that
2 week and the immediately preceding twelve weeks:

3 (1) equaled or exceeded one hundred twenty
4 percent of the average of the rates for the corresponding
5 thirteen-week period ending in each of the preceding two
6 calendar years; and

7 (2) equaled or exceeded five percent; or

8 (3) equaled or exceeded six percent,
9 regardless of the rate of insured unemployment in the two
10 previous years; or

11 (4) with respect to benefits for weeks of
12 unemployment beginning after July 1, 2003:

13 (a) the average rate of total
14 unemployment, seasonally adjusted, as determined by the United
15 States secretary of labor, for the period consisting of the
16 most recent three months for which data for all states are
17 published before the close of such week equals or exceeds six
18 and one-half percent; and

19 (b) the average rate of total
20 unemployment in this state, seasonally adjusted, as determined
21 by the United States secretary of labor, for the three-month
22 period referred to in Subparagraph (a) of this paragraph,
23 equals or exceeds one hundred ten percent of such average for
24 either or both of the corresponding three-month periods ending
25 in the two preceding calendar years.

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1 C. There is a "state 'off' indicator" for this
2 state for a week only if, for the period consisting of that
3 week and the immediately preceding twelve weeks, none of the
4 options specified in Subsection B of this section result in a
5 "state 'on' indicator".

6 D. Except as provided in Subsection E of this
7 section, the total extended benefit amount payable to an
8 eligible individual with respect to the applicable benefit year
9 shall be the least of the following amounts:

10 (1) fifty percent of the total amount of
11 regular benefits that were payable to the individual pursuant
12 to this section in the individual's applicable benefit year;

13 (2) thirteen times the individual's average
14 weekly benefit amount that was payable to the individual
15 pursuant to this section for a week of total unemployment in
16 the applicable benefit year; or

17 (3) thirty-nine times the individual's average
18 weekly benefit amount that was payable to the individual
19 pursuant to this section for a week of total unemployment in
20 the applicable benefit year, reduced by the total amount of
21 regular benefits that were paid, or deemed paid, to the
22 individual pursuant to this section with respect to the benefit
23 year; provided that the amount determined pursuant to this
24 paragraph shall be reduced by the total amount of additional
25 benefits paid, or deemed paid, to the individual under the

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1 provisions of this section for weeks of unemployment in the
2 individual's benefit year that began prior to the effective
3 date of the extended benefit period that is current in the week
4 for which the individual first claims extended benefits; and
5 provided further, if the benefit year of the individual ends
6 within an extended benefit period, the remaining balance of the
7 extended benefits that the individual would, but for this
8 paragraph, be entitled to receive in that extended benefit
9 period, with respect to weeks of unemployment beginning after
10 the end of the benefit year, shall be reduced, but not below
11 zero, by the product of the number of weeks for which the
12 individual received any amounts as readjustment allowances
13 within that benefit year multiplied by the individual weekly
14 benefit amount for extended benefits.

15 E. Effective with respect to weeks beginning in a
16 high-unemployment period, the total extended benefit amount
17 payable to an eligible individual with respect to the
18 applicable benefit year shall be the least of the following
19 amounts:

20 (1) eighty percent of the total amount of
21 regular benefits that were payable to the individual pursuant
22 to this section in the individual's applicable benefit year;

23 (2) twenty times the individual's average
24 weekly benefit amount that was payable to the individual
25 pursuant to this section for a week of total unemployment in

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1 the applicable benefit year; or

2 (3) forty-six times the individual's average
3 weekly benefit amount that was payable to the individual
4 pursuant to this section for a week of total unemployment in
5 the applicable benefit year reduced by the total amount of
6 regular benefits that were paid, or deemed paid, to the
7 individual pursuant to this section with respect to the benefit
8 year; provided that the amount determined pursuant to this
9 paragraph shall be reduced by the total amount of additional
10 benefits paid, or deemed paid, to the individual under the
11 provisions of this section for weeks of unemployment in the
12 individual's benefit year that began prior to the effective
13 date of the extended benefit period that is current in the week
14 for which the individual first claims extended benefits; and
15 provided further, if the benefit year of an individual ends
16 within an extended benefit period, the remaining balance of the
17 extended benefits that the individual would, but for this
18 paragraph, be entitled to receive in that extended benefit
19 period, with respect to weeks of unemployment beginning after
20 the end of the benefit year, shall be reduced, but not below
21 zero, by the product of the number of weeks for which the
22 individual received any amounts as readjustment allowances
23 within that benefit year multiplied by the individual weekly
24 benefit amount for extended benefits.

25 F. For purposes of Subsection E of this section,

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1 "high-unemployment period" means a period during which an
2 extended benefit period would be in effect if Paragraph (4) of
3 Subsection B of this section were applied by substituting
4 "eight percent" for "six and one-half percent".

5 G. A benefit paid to an individual pursuant to this
6 section shall be charged pursuant to Subsection B of Section
7 51-1-11 NMSA 1978.

8 [~~D.~~] H. As used in this section:

9 (1) "rate of insured unemployment" [~~for~~
10 ~~purposes of Subsections B and C of this section~~] means the
11 percentage derived by dividing:

12 [~~(1)~~] (a) the average weekly number of
13 individuals filing claims for regular benefits in this state
14 for weeks [~~for~~] of unemployment with respect to the most recent
15 thirteen-consecutive-week period, as determined by the
16 secretary on the basis of his reports to the United States
17 secretary of labor; by

18 [~~(2)~~] (b) the average monthly employment
19 covered under the Unemployment Compensation Law for the first
20 four of the most recent six completed calendar quarters ending
21 before the end of such thirteen-week period;

22 [~~E.~~] (2) "regular benefits" means benefits
23 payable to an individual under the Unemployment Compensation
24 Law or under any other state law, including benefits payable to
25 federal civilian employees and to ex-servicemen pursuant to 5

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1 U.S.C., Chapter 85, other than extended benefits;

2 [F-] (3) "extended benefits" means benefits,
3 including benefits payable to federal civilian employees and to
4 ex-servicemen pursuant to 5 U.S.C., Chapter 85, payable to an
5 individual under the provisions of this section for weeks of
6 unemployment in [his] the individual's eligibility period;

7 [G-] (4) "eligibility period" of an individual
8 means the period consisting of the weeks in [his] the
9 individual's benefit year [which] that begin in an extended
10 benefit period and, if [his] the individual's benefit year ends
11 within such extended benefit period, any weeks thereafter
12 [which] that begin in such period;

13 [H-] (5) "exhaustee" means an individual who,
14 with respect to any week of unemployment in [his] the
15 individual's eligibility period:

16 [(1)] (a) has received, prior to such
17 week, all of the regular benefits that were available to [him]
18 the individual under the Unemployment Compensation Law or any
19 other state law, including dependent's allowance and benefits
20 payable to federal civilian employees and ex-servicemen under 5
21 U.S.C., Chapter 85, in [his] the individual's current benefit
22 year that includes such week; provided that, for the purposes
23 of this subparagraph, an individual shall be deemed to have
24 received all of the regular benefits that were available to
25 [him] the individual, although, as a result of a pending appeal

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1 with respect to wages that were not considered in the original
2 monetary determination in [~~his~~] the individual's benefit year,
3 [~~he~~] the individual may subsequently be determined to be
4 entitled to added regular benefits; or

5 [~~(2) his~~] (b) if the individual's
6 benefit year [~~having~~] has expired prior to such week, has no,
7 or insufficient, wages on the basis of which [~~he~~] the
8 individual could establish a new benefit year that would
9 include such week; and

10 [~~(3)~~] (c) has no right to unemployment
11 benefits or allowances, as the case may be, under the Railroad
12 Unemployment Insurance Act, the Trade Expansion Act of 1962,
13 the Trade Act of 1974, the Automotive Products Trade Act of
14 1965 and such other federal laws as are specified in
15 regulations issued by the United States secretary of labor; and
16 has not received and is not seeking unemployment benefits under
17 the unemployment compensation law of Canada, but if [~~he~~] the
18 individual is seeking such benefits and the appropriate agency
19 finally determines that [~~he~~] the individual is not entitled to
20 benefits under such law, [~~he~~] the individual is considered an
21 exhaustee; and

22 [~~F.~~] (6) "state law" means the unemployment
23 insurance law of any state, approved by the United States
24 secretary of labor under Section 3304 of the Internal Revenue
25 Code of [~~1954~~] 1986. "

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1 Section 8. Section 51-1-4 NMSA 1978 (being Laws 1969,
2 Chapter 213, Section 1, as amended, and as further amended by
3 Section 1 of this act) is repealed and a new Section 51-1-4
4 NMSA 1978 is enacted to read:

5 "51-1-4. [NEW MATERIAL] MONETARY COMPUTATION OF
6 BENEFITS--PAYMENT GENERALLY. --

7 A. All benefits provided herein are payable from
8 the unemployment compensation fund. All benefits shall be paid
9 in accordance with rules prescribed by the secretary through
10 employment offices or other agencies as the secretary approves
11 by general rule.

12 B. Weekly benefits shall be as follows:

13 (1) an individual's "weekly benefit amount" is
14 an amount equal to one twenty-sixth of the total wages for
15 insured work paid to the individual in that quarter of the
16 individual's base period in which total wages were highest. No
17 benefit as so computed may be less than ten percent or more
18 than fifty-two and one-half percent of the state's average
19 weekly wage for all insured work. The state's average weekly
20 wage shall be computed from all wages reported to the
21 department from employing units in accordance with rules of the
22 secretary for the period ending June 30 of each calendar year
23 divided by the total number of covered employees divided by
24 fifty-two, effective for the benefit years commencing on or
25 after the first Sunday of the following calendar year. An

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1 individual is not eligible to receive benefits unless the
2 individual has wages in at least two quarters of that
3 individual's base period. For the purposes of this subsection,
4 "total wages" means all remuneration for insured work,
5 including commissions and bonuses and the cash value of all
6 remuneration in a medium other than cash;

7 (2) an eligible individual who is unemployed
8 in any week during which the individual is in a continued
9 claims status shall be paid, with respect to the week, a
10 benefit in an amount equal to the individual's weekly benefit
11 amount, less that part of the wages, if any, or earnings from
12 self-employment, payable to the individual with respect to such
13 week that is in excess of one-fifth of the individual's weekly
14 benefit amount. For purposes of this subsection only, "wages"
15 includes all remuneration for services actually performed in a
16 week for which benefits are claimed, vacation pay for a period
17 for which the individual has a definite return-to-work date,
18 wages in lieu of notice and back pay for loss of employment but
19 does not include payments through a court for time spent in
20 jury service;

21 (3) notwithstanding any other provision of
22 this section, an eligible individual who, pursuant to a plan
23 financed in whole or in part by a base-period employer of the
24 individual, is receiving a governmental or other pension,
25 retirement pay, annuity or any other similar periodic payment

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1 that is based on the previous work of the individual and who is
2 unemployed with respect to any week ending subsequent to April
3 9, 1981 shall be paid with respect to the week, in accordance
4 with rules prescribed by the secretary, compensation equal to
5 the individual's weekly benefit amount reduced, but not below
6 zero, by the prorated amount of the pension, retirement pay,
7 annuity or other similar periodic payment that exceeds the
8 percentage contributed to the plan by the eligible individual.
9 The maximum benefit amount payable to the eligible individual
10 shall be an amount not more than twenty-six times his reduced
11 weekly benefit amount. If payments referred to in this section
12 are being received by an individual under the federal Social
13 Security Act, the division shall take into account the
14 individual's contribution and make no reduction in the weekly
15 benefit amount;

16 (4) in the case of a lump-sum payment of a
17 pension, retirement or retired pay, annuity or other similar
18 payment by a base-period employer that is based on the previous
19 work of the individual, the payment shall be allocated, in
20 accordance with rules prescribed by the secretary, and shall
21 reduce the amount of unemployment compensation paid, but not
22 below zero, in accordance with Paragraph (3) of this
23 subsection; and

24 (5) the retroactive payment of a pension,
25 retirement or retired pay, annuity or any other similar

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1 periodic payment as provided in Paragraphs (3) and (4) of this
2 subsection attributable to weeks during which an individual has
3 claimed or has been paid unemployment compensation shall be
4 allocated to those weeks and shall reduce the amount of
5 unemployment compensation for those weeks, but not below zero,
6 by an amount equal to the prorated amount of the pension. Any
7 overpayment of unemployment compensation benefits resulting
8 from the application of the provisions of this paragraph shall
9 be recovered from the claimant in accordance with the
10 provisions of Section 51-1-38 NMSA 1978.

11 C. An otherwise eligible individual is entitled
12 during any benefit year to a total amount of benefits equal to
13 whichever is the lesser of twenty-six times the individual's
14 weekly benefit amount or sixty percent of the individual's
15 wages for insured work paid during the individual's base
16 period.

17 D. A benefit as determined in Subsection B or C of
18 this section, if not a multiple of one dollar (\$1.00), shall be
19 rounded to the next lower multiple of one dollar (\$1.00).

20 E. The secretary may prescribe rules to provide for
21 the payment of benefits that are due and payable to the legal
22 representative, dependents, relatives or next of kin of
23 claimants since deceased. These rules need not conform with
24 the laws governing successions, and the payment shall be deemed
25 a valid payment to the same extent as if made under a formal

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1 administration of the succession of the claimant.

2 F. The division, on its own initiative, may
3 reconsider a monetary determination whenever it is determined
4 that an error in computation or identity has occurred or that
5 wages of the claimant pertinent to such determination but not
6 considered have been newly discovered or that the benefits have
7 been allowed or denied on the basis of misrepresentation of
8 fact, but no redetermination shall be made after one year from
9 the date of the original monetary determination. Notice of a
10 redetermination shall be given to all interested parties and
11 shall be subject to an appeal in the same manner as the
12 original determination. In the event that an appeal involving
13 an original monetary determination is pending at the time a
14 redetermination is issued, the appeal, unless withdrawn, shall
15 be treated as an appeal from redetermination. "

16 Section 9. Section 51-1-5 NMSA 1978 (being Laws 1969,
17 Chapter 213, Section 2, as amended, and as further amended by
18 Section 2 of this act) is repealed and a new Section 51-1-5
19 NMSA 1978 is enacted to read:

20 "51-1-5. [NEW MATERIAL] BENEFIT ELIGIBILITY CONDITIONS. --

21 A. An unemployed individual shall be eligible to
22 receive benefits with respect to any week only if the
23 individual:

24 (1) has made a claim for benefits with respect
25 to such week in accordance with such rules as the secretary may

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1 prescribe;

2 (2) has registered for work at, and thereafter
3 continued to report at, an employment office in accordance with
4 such rules as the secretary may prescribe, except that the
5 secretary may, by rule, waive or alter either or both of the
6 requirements of this paragraph as to individuals attached to
7 regular jobs and as to such other types of cases or situations
8 with respect to which the secretary finds that compliance with
9 such requirements would be oppressive or would be inconsistent
10 with the purposes of the Unemployment Compensation Law. No
11 such rule shall conflict with Subsection A of Section 51-1-4
12 NMSA 1978;

13 (3) is able to work and is available for work
14 and is actively seeking permanent and substantially full-time
15 work in accordance with the terms, conditions and hours common
16 in the occupation or business in which the individual is
17 seeking work, except that the secretary may, by rule, waive
18 this requirement for individuals who are on temporary layoff
19 status from their regular employment with an assurance from
20 their employers that the layoff shall not exceed four weeks or
21 who have an express offer in writing of substantially full-time
22 work that will begin within a period not exceeding four weeks;

23 (4) has been unemployed for a waiting period
24 of one week. A week shall not be counted as a week of
25 unemployment for the purposes of this paragraph:

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1 (a) unless it occurs within the benefit
2 year that includes the week with respect to which the
3 individual claims payment of benefits;

4 (b) if benefits have been paid with
5 respect thereto; and

6 (c) unless the individual was eligible
7 for benefits with respect thereto as provided in this section
8 and Section 51-1-7 NMSA 1978, except for the requirements of
9 this subsection and of Subsection D of Section 51-1-7 NMSA
10 1978;

11 (5) has been paid wages in at least two
12 quarters of the individual's base period;

13 (6) has reported to an office of the division
14 in accordance with the rules of the secretary for the purpose
15 of an examination and review of the individual's availability
16 for and search for work, for employment counseling, referral
17 and placement and for participation in a job finding or
18 employability training and development program. An individual
19 shall not be denied benefits under this section for any week
20 that the individual is participating in a job finding or
21 employability training and development program; and

22 (7) participates in reemployment services,
23 such as job search assistance services, if the division
24 determines that the individual is likely to exhaust regular
25 benefits and need reemployment services pursuant to a profiling

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1 system established by the division, unless the division
2 determines that:

3 (a) the individual has completed such
4 services; or

5 (b) there is justifiable cause for the
6 individual's failure to participate in the services.

7 B. A benefit year as provided in Section 51-1-4
8 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
9 established; provided an individual may not receive benefits in
10 a benefit year unless, subsequent to the beginning of the
11 immediately preceding benefit year during which the individual
12 received benefits, the individual performed service in
13 "employment", as defined in Subsection F of Section 51-1-42
14 NMSA 1978, and earned remuneration for such service in an
15 amount equal to at least five times the individual's weekly
16 benefit amount.

17 C. Benefits based on service in employment defined
18 in Paragraph (8) of Subsection F of Section 51-1-42 and Section
19 51-1-43 NMSA 1978 are to be paid in the same amount, on the
20 same terms and subject to the same conditions as compensation
21 payable on the basis of other services subject to the
22 Unemployment Compensation Law; except that:

23 (1) benefits based on services performed in an
24 instructional, research or principal administrative capacity
25 for an educational institution shall not be paid for any week

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1 of unemployment commencing during the period between two
2 successive academic years or terms or, when an agreement
3 provides for a similar period between two regular but not
4 successive terms, during such period or during a period of paid
5 sabbatical leave provided for in the individual's contract, to
6 any individual if the individual performs such services in the
7 first of such academic years or terms and if there is a
8 contract or a reasonable assurance that the individual will
9 perform services in any such capacity for any educational
10 institution in the second of such academic years or terms;

11 (2) benefits based on services performed for
12 an educational institution other than in an instructional,
13 research or principal administrative capacity shall not be paid
14 for any week of unemployment commencing during a period between
15 two successive academic years or terms if the services are
16 performed in the first of such academic years or terms and
17 there is a reasonable assurance that the individual will
18 perform services for any educational institution in the second
19 of such academic years or terms. If compensation is denied to
20 an individual under this paragraph and the individual was not
21 offered an opportunity to perform such services for the
22 educational institution for the second of such academic years
23 or terms, the individual shall be entitled to a retroactive
24 payment of benefits for each week for which the individual
25 filed a claim and certified for benefits in accordance with the

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1 rules of the division and for which benefits were denied solely
2 by reason of this paragraph;

3 (3) benefits shall be denied to any individual
4 for any week that commences during an established and customary
5 vacation period or holiday recess if the individual performs
6 any services described in Paragraphs (1) and (2) of this
7 subsection in the period immediately before such period of
8 vacation or holiday recess and there is a reasonable assurance
9 that the individual will perform any such services in the
10 period immediately following such vacation period or holiday
11 recess;

12 (4) benefits shall not be payable on the basis
13 of services specified in Paragraphs (1) and (2) of this
14 subsection during the periods specified in Paragraphs (1), (2)
15 and (3) of this subsection to any individual who performed such
16 services in or to or on behalf of an educational institution
17 while in the employ of a state or local governmental
18 educational service agency or other governmental entity or
19 nonprofit organization; and

20 (5) for the purpose of this subsection, to the
21 extent permitted by federal law, "reasonable assurance" means a
22 reasonable expectation of employment in a similar capacity in
23 the second of such academic years or terms based upon a
24 consideration of all relevant factors, including the historical
25 pattern of reemployment in such capacity, a reasonable

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1 anticipation that such employment will be available and a
2 reasonable notice or understanding that the individual will be
3 eligible for and offered employment in a similar capacity.

4 D. Paragraphs (1), (2), (3), (4) and (5) of
5 Subsection C of this section shall apply to services performed
6 for all educational institutions, public or private, for profit
7 or nonprofit, which are operated in this state or subject to an
8 agreement for coverage under the Unemployment Compensation Law
9 of this state, unless otherwise exempt by law.

10 E. Notwithstanding any other provisions of this
11 section or Section 51-1-7 NMSA 1978, no otherwise eligible
12 individual is to be denied benefits for any week because the
13 individual is in training with the approval of the division nor
14 is the individual to be denied benefits by reason of
15 application of provisions in Paragraph (3) of Subsection A of
16 this section or Subsection C of Section 51-1-7 NMSA 1978 with
17 respect to any week in which the individual is in training with
18 the approval of the division. The secretary shall provide, by
19 rule, standards for approved training and the conditions for
20 approving training for claimants, including any training
21 approved or authorized for approval pursuant to Section
22 236(a) (1) and (2) of the Trade Act of 1974, as amended, or
23 required to be approved as a condition for certification of the
24 state's Unemployment Compensation Law by the United States
25 secretary of labor.

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1 F. Notwithstanding any other provisions of this
2 section, benefits shall not be payable on the basis of services
3 performed by an alien unless such alien is an individual who
4 was lawfully admitted for permanent residence at the time the
5 services were performed, was lawfully present for the purposes
6 of performing the services or was permanently residing in the
7 United States under color of law at the time the services were
8 performed, including an alien who was lawfully present in the
9 United States as a result of the application of the provisions
10 of Section 212(d)(5) of the Immigration and Nationality Act;
11 provided that:

12 (1) any information required of individuals
13 applying for benefits to determine their eligibility for
14 benefits under this subsection shall be uniformly required from
15 all applicants for benefits; and

16 (2) an individual shall not be denied benefits
17 because of the individual's alien status except upon a
18 preponderance of the evidence.

19 G. Notwithstanding any other provision of this
20 section, benefits shall not be paid to any individual on the
21 basis of any services substantially all of which consist of
22 participating in sports or athletic events or training or
23 preparing to so participate for any week that commences during
24 the period between two successive sport seasons, or similar
25 periods, if the individual performed the services in the first

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1 of such seasons, or similar periods, and there is a reasonable
2 assurance that the individual will perform the services in the
3 latter of such seasons or similar periods.

4 H. Students who are enrolled in a full-time course
5 schedule in an educational or training institution or program,
6 other than those persons in an approved vocational training
7 program in accordance with Subsection E of this section, shall
8 not be eligible for unemployment benefits except as provided by
9 regulations promulgated by the secretary.

10 I. As used in this subsection, "seasonal ski
11 employee" means an employee who has not worked for a ski area
12 operator for more than six consecutive months of the previous
13 twelve months or nine of the previous twelve months. An
14 employee of a ski area operator who has worked for a ski area
15 operator for six consecutive months of the previous twelve
16 months or nine of the previous twelve months shall not be
17 considered a seasonal ski employee. The following benefit
18 eligibility conditions apply to a seasonal ski employee:

19 (1) except as provided in Paragraphs (2) and
20 (3) of this subsection, a seasonal ski employee employed by a
21 ski area operator on a regular seasonal basis shall be
22 ineligible for a week of unemployment benefits that commences
23 during a period between two successive ski seasons unless the
24 individual establishes to the satisfaction of the secretary
25 that the individual is available for and is making an active

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1 search for permanent full-time work;

2 (2) a seasonal ski employee who has been
3 employed by a ski area operator during two successive ski
4 seasons shall be presumed to be unavailable for permanent new
5 work during a period after the second successive ski season
6 that the individual was employed as a seasonal ski employee;
7 and

8 (3) the presumption described in Paragraph (2)
9 of this subsection shall not arise as to any seasonal ski
10 employee who has been employed by the same ski area operator
11 during two successive ski seasons and has resided continuously
12 for at least twelve successive months and continues to reside
13 in the county in which the ski area facility is located.

14 J. Notwithstanding any other provision of this
15 section, an otherwise eligible individual shall not be denied
16 benefits for any week by reason of the application of Paragraph
17 (3) of Subsection A of this section because the individual is
18 before any court of the United States or any state pursuant to
19 a lawfully issued summons to appear for jury duty. "

20 Section 10. Section 51-1-7 NMSA 1978 (being Laws 1936
21 (S.S.), Chapter 1, Section 5, as amended, and as further
22 amended by Section 3 of this act) is repealed and a new Section
23 51-1-7 NMSA 1978 is enacted to read:

24 "51-1-7. [NEW MATERIAL] DISQUALIFICATION FOR BENEFITS. --

25 A. An individual shall be disqualified for, and

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1 shall not be eligible to receive, benefits:

2 (1) if it is determined by the division that
3 the individual left employment voluntarily without good cause
4 in connection with the employment; provided, however, that a
5 person shall not be denied benefits under this paragraph solely
6 on the basis of pregnancy or the termination of pregnancy;

7 (2) if it is determined by the division that
8 the individual has been discharged for misconduct connected
9 with the individual's employment; or

10 (3) if it is determined by the division that
11 the individual has failed without good cause either to apply
12 for available, suitable work when so directed or referred by
13 the division or to accept suitable work when offered.

14 B. In determining whether or not any work is
15 suitable for an individual pursuant to Paragraph (3) of
16 Subsection A of this section, the division shall consider the
17 degree of risk involved to the individual's health, safety and
18 morals, the individual's physical fitness, prior training,
19 experience, prior earnings, length of unemployment and
20 prospects for securing local work in the individual's customary
21 occupation and the distance of available work from the
22 individual's residence. Notwithstanding any other provisions
23 of the Unemployment Compensation Law, no work shall be deemed
24 suitable and benefits shall not be denied under the
25 Unemployment Compensation Law to any otherwise eligible

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1 individual for refusing to accept new work under any of the
2 following conditions:

3 (1) if the position offered is vacant due
4 directly to a strike, lockout or other labor dispute;

5 (2) if the wages, hours or other conditions of
6 the work offered are substantially less favorable to the
7 individual than those prevailing for similar work in the
8 locality; or

9 (3) if, as a condition of being employed, the
10 individual would be required to join a company union or to
11 resign from or refrain from joining any bona fide labor
12 organizations.

13 C. An individual shall be disqualified for, and
14 shall not be eligible to receive, benefits for any week with
15 respect to which the division finds that the individual's
16 unemployment is due to a labor dispute at the factory,
17 establishment or other premises at which the individual is or
18 was last employed; provided that this subsection shall not
19 apply if it is shown to the satisfaction of the division that:

20 (1) the individual is not participating in or
21 directly interested in the labor dispute; and

22 (2) the individual does not belong to a grade
23 or class of workers of which, immediately before the
24 commencement of the labor dispute, there were members employed
25 at the premises at which the labor dispute occurs, any of whom

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1 are participating in or directly interested in the dispute;
2 provided that if in any case separate branches of work that are
3 commonly conducted in separate businesses in separate premises
4 are conducted in separate departments of the same premises,
5 each such department shall, for the purposes of this
6 subsection, be deemed to be a separate factory, establishment
7 or other premises.

8 D. An individual shall be disqualified for, and
9 shall not be eligible to receive, benefits for any week with
10 respect to which, or a part of which, the individual has
11 received or is seeking, through any agency other than the
12 division, unemployment benefits under an unemployment
13 compensation law of another state or of the United States;
14 provided that if the appropriate agency of such other state or
15 of the United States finally determines that the individual is
16 not entitled to such unemployment benefits, this
17 disqualification shall not apply.

18 E. A disqualification pursuant to Paragraph (1) or
19 (2) of Subsection A of this section shall continue for the
20 duration of the individual's unemployment and until the
21 individual has earned wages in bona fide employment other than
22 self-employment, as provided by rule of the secretary, in an
23 amount equivalent to five times the individual's weekly benefit
24 otherwise payable. A disqualification pursuant to Paragraph
25 (3) of Subsection A of this section shall include the week the

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1 failure occurred and shall continue for the duration of the
2 individual's unemployment and until the individual has earned
3 wages in bona fide employment other than self-employment, as
4 provided by rule of the secretary, in an amount equivalent to
5 five times the individual's weekly benefit amount otherwise
6 payable; provided that no more than one such disqualification
7 shall be imposed upon an individual for failure to apply for or
8 accept the same position, or a similar position, with the same
9 employer, except upon a determination by the division of
10 disqualification pursuant to Subsection C of this section.

11 F. As used in this section, "employment" means
12 employment by the individual's last employer as defined by
13 rules of the secretary. "

14 Section 11. Section 51-1-11 NMSA 1978 (being Laws 1961,
15 Chapter 139, Section 3, as amended, and as further amended by
16 Section 4 of this act) is repealed and a new Section 51-1-11
17 NMSA 1978 is enacted to read:

18 "51-1-11. [NEW MATERIAL] FUTURE RATES BASED ON BENEFIT
19 EXPERIENCE. --

20 A. The division shall maintain a separate account
21 for each contributing employer and shall credit the
22 contributing employer's account with all contributions paid by
23 that employer under the Unemployment Compensation Law. Nothing
24 in the Unemployment Compensation Law shall be construed to
25 grant an employer or individuals in the employer's service

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1 prior claims or rights to the amounts paid by the employer into
2 the fund.

3 B. Benefits paid to an individual shall be charged
4 against the accounts of the individual's base-period employers
5 on a pro rata basis according to the proportion of the
6 individual's total base-period wages received from each
7 employer, except that no benefits paid to a claimant as
8 extended benefits under the provisions of Section 51-1-48 NMSA
9 1978 shall be charged to the account of any base-period
10 employer who is not on a reimbursable basis and who is not a
11 governmental entity and, except as the secretary shall by rule
12 prescribe otherwise, in the case of benefits paid to an
13 individual who:

14 (1) left the employ of a base-period employer
15 who is not on a reimbursable basis voluntarily without good
16 cause in connection with the individual's employment;

17 (2) was discharged from the employment of a
18 base-period employer who is not on a reimbursable basis for
19 misconduct connected with the individual's employment;

20 (3) is employed part time by a base-period
21 employer who is not on a reimbursable basis and who continues
22 to furnish the individual the same part-time work while the
23 individual is separated from full-time work for a
24 nondisqualifying reason; or

25 (4) received benefits based upon wages earned

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1 from a base-period employer who is not on a reimbursable basis
2 while attending approved training under the provisions of
3 Subsection E of Section 51-1-5 NMSA 1978.

4 C. The division shall not charge a contributing or
5 reimbursing base-period employer's account with any portion of
6 benefit amounts that the division can bill to or recover from
7 the federal government as either regular or extended benefits.

8 D. All contributions to the fund shall be pooled
9 and available to pay benefits to any individual entitled
10 thereto, irrespective of the source of such contributions. The
11 standard rate of contributions payable by each employer shall
12 be five and four-tenths percent.

13 E. An employer's rate shall not be varied from the
14 standard rate for any calendar year unless, as of the
15 computation date for that year, the employer's account has been
16 chargeable with benefits throughout the preceding thirty-six
17 months, except that:

18 (1) the provisions of this subsection shall
19 not apply to governmental entities;

20 (2) subsequent to December 31, 1984, any
21 employing unit that becomes an employer subject to the payment
22 of contributions under the Unemployment Compensation Law or has
23 been an employer subject to the payment of contributions at a
24 standard rate of two and seven-tenths percent through December
25 31, 1984 shall be subject to the payment of contributions at

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1 the reduced rate of two and seven-tenths percent until, as of
2 the computation date of a particular year, the employer's
3 account has been chargeable with benefits throughout the
4 preceding thirty-six months; and

5 (3) any individual, type of organization or
6 employing unit that acquires all or part of the trade or
7 business of another employing unit, pursuant to Paragraphs (2)
8 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
9 a reduced rate of contribution shall be entitled to the
10 transfer of the reduced rate to the extent permitted under
11 Subsection G of this section.

12 F. The secretary shall, for the year 1942 and for
13 each calendar year thereafter, classify employers in accordance
14 with their actual experience in the payment of contributions
15 and with respect to benefits charged against their accounts,
16 with a view of fixing such contribution rates as will reflect
17 such benefit experience. An employer's rate for any calendar
18 year shall be determined on the basis of the employer's record
19 and the condition of the fund as of the computation date for
20 such calendar year.

21 An employer may make voluntary payments in addition to the
22 contributions required under the Unemployment Compensation Law,
23 which shall be credited to the employer's account in accordance
24 with department rule. The voluntary payments shall be included
25 in the employer's account as of the employer's most recent

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1 computation date if they are made on or before the following
2 March 1. Voluntary payments when accepted from an employer
3 shall not be refunded in whole or in part.

4 G. In the case of a transfer of an employing
5 enterprise, the experience history of the transferred
6 enterprise as provided in Subsection F of this section shall be
7 transferred from the predecessor employer to the successor
8 under the following conditions and in accordance with the
9 applicable rules of the secretary:

10 (1) Definitions:

11 (a) "employing enterprise" is a business
12 activity engaged in by a contributing employing unit in which
13 one or more persons have been employed within the current or
14 the three preceding calendar quarters;

15 (b) "predecessor" means the owner and
16 operator of an employing enterprise immediately prior to the
17 transfer of such enterprise;

18 (c) "successor" means any individual or
19 any type of organization that acquires an employing enterprise
20 and continues to operate such business entity; and

21 (d) "experience history" means the
22 experience rating record and reserve account, including the
23 actual contributions, benefit charges and payroll experience of
24 the employing enterprise.

25 (2) For the purpose of this section, two or

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1 more employers who are parties to or the subject of any
2 transaction involving the transfer of an employing enterprise
3 shall be deemed to be a single employer and the experience
4 history of the employing enterprise shall be transferred to the
5 successor employer if the successor employer has acquired by
6 the transaction all of the business enterprises of the
7 predecessor; provided that:

8 (a) all contributions, interest and
9 penalties due from the predecessor employer have been paid;

10 (b) notice of the transfer has been
11 given in accordance with the rules of the secretary within four
12 years of the transaction transferring the employing enterprise
13 or the date of the actual transfer of control and operation of
14 the employing enterprise;

15 (c) in the case of the transfer of an
16 employing enterprise, the successor employer must notify the
17 division of the acquisition on or before the due date of the
18 successor employer's first wage and contribution report. If
19 the successor employer fails to notify the division of the
20 acquisition within this time limit, the division, when it
21 receives actual notice, shall effect the transfer of the
22 experience history and applicable rate of contribution
23 retroactively to the date of the acquisition, and the successor
24 shall pay a penalty of fifty dollars (\$50.00); and

25 (d) where the transaction involves only

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1 a merger, consolidation or other form of reorganization without
2 a substantial change in the ownership and controlling interest
3 of the business entity, as determined by the secretary, the
4 limitations on transfers stated in Subparagraphs (a), (b) and
5 (c) of this paragraph shall not apply. A party to a merger,
6 consolidation or other form of reorganization described in this
7 paragraph shall not be relieved of liability for any
8 contributions, interest or penalties due and owing from the
9 employing enterprise at the time of the merger, consolidation
10 or other form of reorganization.

11 (3) The applicable experience history may be
12 transferred to the successor in the case of a partial transfer
13 of an employing enterprise if the successor has acquired one or
14 more of the several employing enterprises of a predecessor but
15 not all of the employing enterprises of the predecessor and
16 each employing enterprise so acquired was operated by the
17 predecessor as a separate store, factory, shop or other
18 separate employing enterprise and the predecessor, throughout
19 the entire period of the contribution with liability applicable
20 to each enterprise transferred, has maintained and preserved
21 payroll records that, together with records of contribution
22 liability and benefit chargeability, can be separated by the
23 parties from the enterprises retained by the predecessor to the
24 satisfaction of the secretary or the secretary's delegate. A
25 partial experience history transfer will be made only if:

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1 (a) the successor notifies the division
2 of the acquisition, in writing, not later than the due date of
3 the successor's first quarterly wage and contribution report
4 after the effective date of the acquisition;

5 (b) the successor files an application
6 provided by the division that contains the endorsement of the
7 predecessor within thirty days from the delivery or mailing of
8 such application by the division to the successor's last known
9 address; and

10 (c) the successor files with the
11 application a Form ES-903A or its equivalent with a schedule of
12 the name and social security number of and the wages paid to
13 and the contributions paid for each employee for the three and
14 one-half year period preceding the computation date as defined
15 in Subparagraph (d) of Paragraph (3) of Subsection H of this
16 section through the date of transfer or such lesser period as
17 the enterprises transferred may have been in operation. The
18 application and Form ES-903A shall be supported by the
19 predecessor's permanent employment records, which shall be
20 available for audit by the division. The application and Form
21 ES-903A shall be reviewed by the division and, upon approval,
22 the percentage of the predecessor's experience history
23 attributable to the enterprises transferred shall be
24 transferred to the successor. The percentage shall be obtained
25 by dividing the taxable payrolls of the transferred enterprises

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1 for such three and one-half year period preceding the date of
2 computation or such lesser period as the enterprises
3 transferred may have been in operation by the predecessor's
4 entire payroll.

5 H. For each calendar year, adjustments of
6 contribution rates below the standard or reduced rate and
7 measures designed to protect the fund are provided in
8 Paragraphs (1) through (4) of this subsection.

9 (1) The total assets in the fund and the total
10 of the last annual payrolls of all employers subject to
11 contributions as of the computation date for each year shall be
12 determined. These annual totals are here called "the fund" and
13 "total payrolls". For each year, the "reserve" of each
14 employer qualified under Subsection E of this section shall be
15 fixed by the excess of the employer's total contributions over
16 total benefit charges computed as a percentage of the
17 employer's average payroll reported for contributions. The
18 determination of each employer's annual rate, computed as of
19 the computation date for each calendar year, shall be made by
20 matching the employer's reserve as shown in the reserve column
21 with the corresponding rate in the rate column of the
22 applicable rate schedule of the table provided in Paragraph (4)
23 of this subsection.

24 (2) Each employer's rate for each calendar
25 year commencing January 1, 1979 or thereafter shall be:

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1 (a) the corresponding rate in schedule 1
2 of the table provided in Paragraph (4) of this subsection if
3 the fund equals at least three and four-tenths percent of the
4 total payrolls;

5 (b) the corresponding rate in schedule 2
6 of the table provided in Paragraph (4) of this subsection if
7 the fund has dropped to less than three and four-tenths percent
8 and not less than two and seven-tenths percent of the total
9 payrolls;

10 (c) the corresponding rate in schedule 3
11 of the table provided in Paragraph (4) of this subsection if
12 the fund has dropped to less than two and seven-tenths percent
13 and not less than two percent of the total payrolls;

14 (d) the corresponding rate in schedule 4
15 of the table provided in Paragraph (4) of this subsection if
16 the fund has dropped to less than two percent and not less than
17 one and one-half percent of the total payrolls;

18 (e) the corresponding rate in schedule 5
19 of the table provided in Paragraph (4) of this subsection if
20 the fund has dropped to less than one and one-half percent and
21 not less than one percent of the total payrolls; or

22 (f) the corresponding rate in schedule 6
23 of the table provided in Paragraph (4) of this subsection if
24 the fund has dropped less than one percent of the total
25 payrolls.

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(3) As used in this section:

(a) "annual payroll" means the total amount of remuneration from an employer for employment during a twelve-month period ending on a computation date, and "average payroll" means the average of the last three annual payrolls;

(b) "base-period wages" means the wages of an individual for insured work during the individual's base period on the basis of which the individual's benefit rights were determined;

(c) "base-period employers" means the employers of an individual during the individual's base period; and

(d) "computation date" for each calendar year means the close of business on June 30 of the preceding calendar year.

(4) Table of employer reserves and

contribution rate schedules:

Employer Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.05%	0.1%	0.6%
9.0%- 9.9%	0.1%	0.2%	0.9%
8.0%- 8.9%	0.2%	0.4%	1.2%
7.0%- 7.9%	0.4%	0.6%	1.5%
6.0%- 6.9%	0.6%	0.8%	1.8%
5.0%- 5.9%	0.8%	1.1%	2.1%

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1	4.0%- 4.9%	1.1%	1.4%	2.4%
2	3.0%- 3.9%	1.4%	1.7%	2.7%
3	2.0%- 2.9%	1.7%	2.0%	3.0%
4	1.0%- 1.9%	2.0%	2.4%	3.3%
5	0.9%- 0.0%	2.4%	3.3%	3.6%
6	(- 0.1%) - (- 0.5%)	3.3%	3.6%	3.9%
7	(- 0.5%) - (- 1.0%)	4.2%	4.2%	4.2%
8	(- 1.0%) - (- 2.0%)	5.0%	5.0%	5.0%
9	Under (- 2.0%)	5.4%	5.4%	5.4%
10	Employer	Contri buti on	Contri buti on	Contri buti on
11	Reserve	Schedul e 4	Schedul e 5	Schedul e 6
12	10.0% and over	0.9%	1.2%	2.7%
13	9.0%- 9.9%	1.2%	1.5%	2.7%
14	8.0%- 8.9%	1.5%	1.8%	2.7%
15	7.0%- 7.9%	1.8%	2.1%	2.7%
16	6.0%- 6.9%	2.1%	2.4%	2.7%
17	5.0%- 5.9%	2.4%	2.7%	3.0%
18	4.0%- 4.9%	2.7%	3.0%	3.3%
19	3.0%- 3.9%	3.0%	3.3%	3.6%
20	2.0%- 2.9%	3.3%	3.6%	3.9%
21	1.0%- 1.9%	3.6%	3.9%	4.2%
22	0.9%- 0.0%	3.9%	4.2%	4.5%
23	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%
24	(- 0.5%) - (- 1.0%)	4.5%	4.8%	5.1%
25	(- 1.0%) - (- 2.0%)	5.0%	5.1%	5.3%

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1 Under (- 2. 0%) 5. 4% 5. 4% 5. 4%.

2 I. The division shall promptly notify each employer
3 of the employer's rate of contributions as determined for any
4 calendar year pursuant to this section. Such notification
5 shall include the amount determined as the employer's average
6 payroll, the total of all of the employer's contributions paid
7 on the employer's behalf and credited to the employer's account
8 for all past years and total benefits charged to the employer's
9 account for all such years. Such determination shall become
10 conclusive and binding upon the employer unless, within thirty
11 days after the mailing of notice thereof to the employer's last
12 known address or in the absence of mailing, within thirty days
13 after the delivery of such notice, the employer files an
14 application for review and redetermination, setting forth the
15 employer's reason therefor. The employer shall be granted an
16 opportunity for a fair hearing in accordance with rules
17 prescribed by the secretary, but an employer shall not have
18 standing, in any proceeding involving the employer's rate of
19 contributions or contribution liability, to contest the
20 chargeability to the employer's account of any benefits paid in
21 accordance with a determination, redetermination or decision
22 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
23 that the services on the basis of which such benefits were
24 found to be chargeable did not constitute services performed in
25 employment for the employer and only in the event that the

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1 employer was not a party to such determination, redetermination
2 or decision, or to any other proceedings under the Unemployment
3 Compensation Law in which the character of such services was
4 determined. The employer shall be promptly notified of the
5 decision on the employer's application for redetermination,
6 which shall become final unless, within fifteen days after the
7 mailing of notice thereof to the employer's last known address
8 or in the absence of mailing, within fifteen days after the
9 delivery of such notice, further appeal is initiated pursuant
10 to Subsection D of Section 51-1-8 NMSA 1978.

11 J. The division shall provide each contributing
12 employer, within ninety days of the end of each calendar
13 quarter, a written determination of benefits chargeable to the
14 employer's account. Such determination shall become conclusive
15 and binding upon the employer for all purposes unless, within
16 thirty days after the mailing of the determination to the
17 employer's last known address or in the absence of mailing,
18 within thirty days after the delivery of such determination,
19 the employer files an application for review and
20 redetermination, setting forth the employer's reason therefor.
21 The employer shall be granted an opportunity for a fair hearing
22 in accordance with rules prescribed by the secretary, but an
23 employer shall not have standing in any proceeding involving
24 the employer's contribution liability to contest the
25 chargeability to the employer's account of any benefits paid in

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1 accordance with a determination, redetermination or decision
2 pursuant to Section 51-1-8 NMSA 1978, except upon the ground
3 that the services on the basis of which such benefits were
4 found to be chargeable did not constitute services performed in
5 employment for the employer and only in the event that the
6 employer was not a party to such determination, redetermination
7 or decision, or to any other proceedings under the Unemployment
8 Compensation Law in which the character of such services was
9 determined. The employer shall be promptly notified of the
10 decision on the employer's application for redetermination,
11 which shall become final unless, within fifteen days after the
12 mailing of notice thereof to the employer's last known address
13 or in the absence of mailing, within fifteen days after the
14 delivery of such notice, further appeal is initiated pursuant
15 to Subsection D of Section 51-1-8 NMSA 1978.

16 K. The contributions, together with interest and
17 penalties thereon imposed by the Unemployment Compensation Law,
18 shall not be assessed nor shall action to collect the same be
19 commenced more than four years after a report showing the
20 amount of the contributions was due. In the case of a false or
21 fraudulent contribution report with intent to evade
22 contributions or a willful failure to file a report of all
23 contributions due, the contributions, together with interest
24 and penalties thereon, may be assessed or an action to collect
25 such contributions may be begun at any time. Before the

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1 expiration of such period of limitation, the employer and the
2 secretary may agree in writing to an extension thereof and the
3 period so agreed on may be extended by subsequent agreements in
4 writing. In any case where the assessment has been made and
5 action to collect has been commenced within four years of the
6 due date of any contribution, interest or penalty, including
7 the filing of a warrant of lien by the secretary pursuant to
8 Section 51-1-36 NMSA 1978, such action shall not be subject to
9 any period of limitation.

10 L. The secretary shall correct any error in the
11 determination of an employer's rate of contribution during the
12 calendar year to which the erroneous rate applies,
13 notwithstanding that notification of the employer's rate of
14 contribution may have been issued and contributions paid
15 pursuant to the notification. Upon issuance by the division of
16 a corrected rate of contribution, the employer shall have the
17 same rights to review and redetermination as provided in
18 Subsection I of this section.

19 M Any interest required to be paid on advances to
20 this state's unemployment compensation fund under Title 12 of
21 the Social Security Act shall be paid in a timely manner as
22 required under Section 1202 of Title 12 of the Social Security
23 Act and shall not be paid, directly or indirectly, by the state
24 from amounts in the state's unemployment compensation fund. "

25 Section 12. Section 51-1-42 NMSA 1978 (being Laws 1936

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1 (S. S.), Chapter 1, Section 19, as amended, and as further
2 amended by Section 5 of this act) is repealed and a new Section
3 51-1-42 NMSA 1978 is enacted to read:

4 "51-1-42. [NEW MATERIAL] DEFINITIONS. --As used in the
5 Unemployment Compensation Law:

6 A. "base period" means the first four of the last
7 five completed calendar quarters immediately preceding the
8 first day of an individual's benefit year;

9 B. "benefits" means the cash unemployment
10 compensation payments payable to an eligible individual
11 pursuant to Section 51-1-4 NMSA 1978 with respect to the
12 individual's weeks of unemployment;

13 C. "contributions" means the money payments
14 required by Section 51-1-9 NMSA 1978 to be made into the fund
15 by an employer on account of having individuals performing
16 services for the employer;

17 D. "employing unit" means any individual or type of
18 organization, including any partnership, association,
19 cooperative, trust, estate, joint-stock company, agricultural
20 enterprise, insurance company or corporation, whether domestic
21 or foreign, or the receiver, trustee in bankruptcy, trustee or
22 successor thereof, household, fraternity or club, the legal
23 representative of a deceased person or any state or local
24 government entity to the extent required by law to be covered
25 as an employer, which has in its employ one or more individuals

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1 performing services for it within this state. An individual
2 performing services for an employing unit that maintains two or
3 more separate establishments within this state shall be deemed
4 to be employed by a single employing unit for all the purposes
5 of the Unemployment Compensation Law. An individual performing
6 services for a contractor, subcontractor or agent that is
7 performing work or services for an employing unit, as described
8 in this subsection, which is within the scope of the employing
9 unit's usual trade, occupation, profession or business, shall
10 be deemed to be in the employ of the employing unit for all
11 purposes of the Unemployment Compensation Law unless the
12 contractor, subcontractor or agent is itself an employer within
13 the provisions of Subsection E of this section;

14 E. "employer" includes:

15 (1) an employing unit that:

16 (a) unless otherwise provided in this
17 section, paid for service in employment as defined in
18 Subsection F of this section wages of four hundred fifty
19 dollars (\$450) or more in any calendar quarter in either the
20 current or preceding calendar year or had in employment, as
21 defined in Subsection F of this section, for some portion of a
22 day in each of twenty different calendar weeks during either
23 the current or the preceding calendar year, and irrespective of
24 whether the same individual was in employment in each such day,
25 at least one individual;

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1 (b) for the purposes of Subparagraph (a)
2 of this paragraph, if any week includes both December 31 and
3 January 1, the days of that week up to January 1 shall be
4 deemed one calendar week and the days beginning January 1,
5 another such week; and

6 (c) for purposes of defining an
7 "employer" under Subparagraph (a) of this paragraph, the wages
8 or remuneration paid to individuals performing services in
9 employment in agricultural labor or domestic services as
10 provided in Paragraphs (6) and (7) of Subsection F of this
11 section shall not be taken into account; except that any
12 employing unit determined to be an employer of agricultural
13 labor under Paragraph (6) of Subsection F of this section shall
14 be an employer under Subparagraph (a) of this paragraph so long
15 as the employing unit is paying wages or remuneration for
16 services other than agricultural services;

17 (2) any individual or type of organization
18 that acquired the trade or business or substantially all of the
19 assets thereof, of an employing unit that at the time of the
20 acquisition was an employer subject to the Unemployment
21 Compensation Law; provided that where such an acquisition takes
22 place, the secretary may postpone activating the separate
23 account pursuant to Subsection A of Section 51-1-11 NMSA 1978
24 until such time as the successor employer has employment as
25 defined in Subsection F of this section;

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1 (3) an employing unit that acquired all or
2 part of the organization, trade, business or assets of another
3 employing unit and that, if treated as a single unit with the
4 other employing unit or part thereof, would be an employer
5 under Paragraph (1) of this subsection;

6 (4) an employing unit not an employer by
7 reason of any other paragraph of this subsection:

8 (a) for which, within either the current
9 or preceding calendar year, service is or was performed with
10 respect to which such employing unit is liable for any federal
11 tax against which credit may be taken for contributions
12 required to be paid into a state unemployment fund; or

13 (b) that, as a condition for approval of
14 the Unemployment Compensation Law for full tax credit against
15 the tax imposed by the Federal Unemployment Tax Act, is
16 required, pursuant to that act, to be an "employer" under the
17 Unemployment Compensation Law;

18 (5) an employing unit that, having become an
19 employer under Paragraph (1), (2), (3) or (4) of this
20 subsection, has not, under Section 51-1-18 NMSA 1978, ceased to
21 be an employer subject to the Unemployment Compensation Law;

22 (6) for the effective period of its election
23 pursuant to Section 51-1-18 NMSA 1978, any other employing unit
24 that has elected to become fully subject to the Unemployment
25 Compensation Law;

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1 (7) an employing unit for which any services
2 performed in its employ are deemed to be performed in this
3 state pursuant to an election under an arrangement entered into
4 in accordance with Subsection A of Section 51-1-50 NMSA 1978;
5 and

6 (8) an Indian tribe as defined in 26 USCA
7 Section 3306(u) for which service in employment is performed;

8 F. "employment":

9 (1) means any service, including service in
10 interstate commerce, performed for wages or under any contract
11 of hire, written or oral, express or implied;

12 (2) means an individual's entire service,
13 performed within or both within and without this state if:

14 (a) the service is primarily localized
15 in this state with services performed outside the state being
16 only incidental thereto; or

17 (b) the service is not localized in any
18 state but some of the service is performed in this state and:
19 1) the base of operations or, if there is no base of
20 operations, the place from which such service is directed or
21 controlled, is in this state; or 2) the base of operations or
22 place from which such service is directed or controlled is not
23 in any state in which some part of the service is performed but
24 the individual's residence is in this state;

25 (3) means services performed within this state

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1 but not covered under Paragraph (2) of this subsection if
2 contributions or payments in lieu of contributions are not
3 required and paid with respect to such services under an
4 unemployment compensation law of any other state, the federal
5 government or Canada;

6 (4) means services covered by an election
7 pursuant to Section 51-1-18 NMSA 1978 and services covered by
8 an election duly approved by the secretary in accordance with
9 an arrangement pursuant to Paragraph (1) of Subsection A of
10 Section 51-1-50 NMSA 1978 shall be deemed to be employment
11 during the effective period of the election;

12 (5) means services performed by an individual
13 for an employer for wages or other remuneration unless and
14 until it is established by a preponderance of evidence that:

15 (a) the individual has been and will
16 continue to be free from control or direction over the
17 performance of the services both under the individual's
18 contract of service and in fact;

19 (b) the service is either outside the
20 usual course of business for which the service is performed or
21 that such service is performed outside of all the places of
22 business of the enterprise for which such service is performed;
23 and

24 (c) the individual is customarily
25 engaged in an independently established trade, occupation,

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1 profession or business of the same nature as that involved in
2 the contract of service;

3 (6) means service performed after December 31,
4 1977 by an individual in agricultural labor as defined in
5 Subsection Q of this section if:

6 (a) the service is performed for an
7 employing unit that: 1) paid remuneration in cash of twenty
8 thousand dollars (\$20,000) or more to individuals in that
9 employment during any calendar quarter in either the current or
10 the preceding calendar year; or 2) employed in agricultural
11 labor ten or more individuals for some portion of a day in each
12 of twenty different calendar weeks in either the current or
13 preceding calendar year, whether or not the weeks were
14 consecutive, and regardless of whether the individuals were
15 employed at the same time;

16 (b) the service is not performed before
17 January 1, 1980 by an individual who is an alien admitted to
18 the United States to perform service in agricultural labor
19 pursuant to Sections 214(c) and 101(15)(H) of the federal
20 Immigration and Nationality Act; and

21 (c) for purposes of this paragraph, an
22 individual who is a member of a crew furnished by a crew leader
23 to perform service in agricultural labor for a farm operator or
24 other person shall be treated as an employee of the crew
25 leader: 1) if the crew leader meets the requirements of a crew

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1 leader as defined in Subsection L of this section; or 2)
2 substantially all the members of the crew operate or maintain
3 mechanized agricultural equipment that is provided by the crew
4 leader; and 3) the individuals performing the services are not,
5 by written agreement or in fact, within the meaning of
6 Paragraph (5) of this subsection, performing services in
7 employment for the farm operator or other person;

8 (7) means service performed after December 31,
9 1977 by an individual in domestic service in a private home,
10 local college club or local chapter of a college fraternity or
11 sorority for a person or organization that paid cash
12 remuneration of one thousand dollars (\$1,000) in any calendar
13 quarter in the current or preceding calendar year to
14 individuals performing such services;

15 (8) means service performed after December 31,
16 1971 by an individual in the employ of a religious, charitable,
17 educational or other organization but only if the following
18 conditions are met:

19 (a) the service is excluded from
20 "employment" as defined in the Federal Unemployment Tax Act
21 solely by reason of Section 3306(c)(8) of that act; and

22 (b) the organization meets the
23 requirements of "employer" as provided in Subparagraph (a) of
24 Paragraph (1) of Subsection E of this section;

25 (9) means service of an individual who is a

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1 citizen of the United States, performed outside the United
2 States, except in Canada, after December 31, 1971 in the employ
3 of an American employer, other than service that is deemed
4 "employment" under the provisions of Paragraph (2) of this
5 subsection or the parallel provisions of another state's law,
6 if:

7 (a) the employer's principal place of
8 business in the United States is located in this state;

9 (b) the employer has no place of
10 business in the United States, but: 1) the employer is an
11 individual who is a resident of this state; 2) the employer is
12 a corporation organized under the laws of this state; or 3) the
13 employer is a partnership or a trust and the number of the
14 partners or trustees who are residents of this state is greater
15 than the number who are residents of any one other state; or

16 (c) none of the criteria of
17 Subparagraphs (a) and (b) of this paragraph are met, but the
18 employer has elected coverage in this state or, the employer
19 having failed to elect coverage in any state, the individual
20 has filed a claim for benefits, based on such service, under
21 the law of this state.

22 "American employer" for the purposes of this paragraph
23 means a person who is: 1) an individual who is a resident of
24 the United States; 2) a partnership if two-thirds or more of
25 the partners are residents of the United States; 3) a trust if

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1 all of the trustees are residents of the United States; or 4) a
2 corporation organized under the laws of the United States or of
3 any state. For the purposes of this paragraph, "United States"
4 includes the United States, the District of Columbia, the
5 commonwealth of Puerto Rico and the Virgin Islands;

6 (10) means, notwithstanding any other
7 provisions of this subsection, service with respect to which a
8 tax is required to be paid under any federal law imposing a tax
9 against which credit may be taken for contributions required to
10 be paid into a state unemployment fund or which as a condition
11 for full tax credit against the tax imposed by the Federal
12 Unemployment Tax Act is required to be covered under the
13 Unemployment Compensation Law;

14 (11) means service performed in the employ of
15 an Indian tribe if:

16 (a) the service is excluded from
17 "employment" as defined in 26 USCA Section 3306(c) solely by
18 reason of 26 USCA Section 3306(c)(7); and

19 (b) the service is not otherwise
20 excluded from employment pursuant to the Unemployment
21 Compensation Law;

22 (12) does not include:

23 (a) service performed in the employ of:
24 1) a church or convention or association of churches; or 2) an
25 organization that is operated primarily for religious purposes

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1 and that is operated, supervised, controlled or principally
2 supported by a church or convention or association of churches;

3 (b) service performed by a duly
4 ordained, commissioned or licensed minister of a church in the
5 exercise of his ministry or by a member of a religious order in
6 the exercise of duties required by such order;

7 (c) service performed by an individual
8 in the employ of his son, daughter or spouse, and service
9 performed by a child under the age of majority in the employ of
10 his father or mother;

11 (d) service performed in the employ of
12 the United States government or an instrumentality of the
13 United States immune under the constitution of the United
14 States from the contributions imposed by the Unemployment
15 Compensation Law except that to the extent that the congress of
16 the United States shall permit states to require any
17 instrumentalities of the United States to make payments into an
18 unemployment fund under a state unemployment compensation act,
19 all of the provisions of the Unemployment Compensation Law
20 shall be applicable to such instrumentalities, and to service
21 performed for such instrumentalities in the same manner, to the
22 same extent and on the same terms as to all other employers,
23 employing units, individuals and services; provided that if
24 this state shall not be certified for any year by the secretary
25 of labor of the United States under Section 3304 of the federal

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1 Internal Revenue Code of 1986, 26 U.S.C. Section 3304, the
2 payments required of such instrumentalities with respect to
3 such year shall be refunded by the department from the fund in
4 the same manner and within the same period as is provided in
5 Subsection D of Section 51-1-36 NMSA 1978 with respect to
6 contributions erroneously collected;

7 (e) service performed in a facility
8 conducted for the purpose of carrying out a program of
9 rehabilitation for individuals whose earning capacity is
10 impaired by age or physical or mental deficiency or injury or
11 providing remunerative work for individuals who because of
12 their impaired physical or mental capacity cannot be readily
13 absorbed in the competitive labor market, by an individual
14 receiving that rehabilitation or remunerative work;

15 (f) service with respect to which
16 unemployment compensation is payable under an unemployment
17 compensation system established by an act of congress;

18 (g) service performed in the employ of a
19 foreign government, including service as a consular or other
20 officer or employee or a nondiplomatic representative;

21 (h) service performed by an individual
22 for a person as an insurance agent or as an insurance
23 solicitor, if all such service performed by the individual for
24 the person is performed for remuneration solely by way of
25 commi ssi on;

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1 (i) service performed by an individual
2 under the age of eighteen in the delivery or distribution of
3 newspapers or shopping news, not including delivery or
4 distribution to any point for subsequent delivery or
5 distribution;

6 (j) service covered by an election duly
7 approved by the agency charged with the administration of any
8 other state or federal unemployment compensation law, in
9 accordance with an arrangement pursuant to Paragraph (1) of
10 Subsection A of Section 51-1-50 NMSA 1978 during the effective
11 period of the election;

12 (k) service performed, as part of an
13 unemployment work-relief or work-training program assisted or
14 financed in whole or part by any federal agency or an agency of
15 a state or political subdivision thereof, by an individual
16 receiving the work relief or work training;

17 (l) service performed by an individual
18 who is enrolled at a nonprofit or public educational
19 institution that normally maintains a regular faculty and
20 curriculum and normally has a regularly organized body of
21 students in attendance at the place where its educational
22 activities are carried on as a student in a full-time program,
23 taken for credit at the institution that combines academic
24 instruction with work experience, if the service is an integral
25 part of such program and the institution has so certified to

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1 the employer, except that this subparagraph shall not apply to
2 service performed in a program established for or on behalf of
3 an employer or group of employers;

4 (m) service performed in the employ of a
5 hospital, if the service is performed by a patient of the
6 hospital, or services performed by an inmate of a custodial or
7 penal institution for any employer;

8 (n) service performed by real estate
9 salesmen for others when the services are performed for
10 remuneration solely by way of commission;

11 (o) service performed in the employ of a
12 school, college or university if the service is performed by a
13 student who is enrolled and is regularly attending classes at
14 the school, college or university;

15 (p) service performed by an individual
16 for a fixed or contract fee officiating at a sporting event
17 that is conducted by or under the auspices of a nonprofit or
18 governmental entity if that person is not otherwise an employee
19 of the entity conducting the sporting event;

20 (q) service performed for a private,
21 for-profit person or entity by an individual as a product
22 demonstrator or product merchandiser if the service is
23 performed pursuant to a written contract between that
24 individual and a person or entity whose principal business is
25 obtaining the services of product demonstrators and product

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1 merchandisers for third parties, for demonstration and
2 merchandising purposes and the individual: 1) is compensated
3 for each job or the compensation is based on factors related to
4 the work performed; 2) provides the equipment used to perform
5 the service, unless special equipment is required and provided
6 by the manufacturer through an agency; 3) is responsible for
7 completion of a specific job and for any failure to complete
8 the job; 4) pays all expenses, and the opportunity for profit
9 or loss rests solely with the individual; and 5) is responsible
10 for operating costs, fuel, repairs and motor vehicle insurance.
11 For the purpose of this subparagraph, "product demonstrator"
12 means an individual who, on a temporary, part-time basis,
13 demonstrates or gives away samples of a food or other product
14 as part of an advertising or sales promotion for the product
15 and who is not otherwise employed directly by the manufacturer,
16 distributor or retailer, and "product merchandiser" means an
17 individual who, on a temporary, part-time basis builds or
18 resets a product display and who is not otherwise directly
19 employed by the manufacturer, distributor or retailer; or
20 (r) service performed for a private,
21 for-profit person or entity by an individual as a landman if
22 substantially all remuneration paid in cash or otherwise for
23 the performance of the services is directly related to the
24 completion by the individual of the specific tasks contracted
25 for rather than to the number of hours worked by the

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1 individual. For the purposes of this subparagraph, "landman"
2 means a land professional who has been engaged primarily in:
3 1) negotiating for the acquisition or divestiture of mineral
4 rights; 2) negotiating business agreements that provide for the
5 exploration for or development of minerals; 3) determining
6 ownership of minerals through the research of public and
7 private records; and 4) reviewing the status of title, curing
8 title defects and otherwise reducing title risk associated with
9 ownership of minerals; managing rights or obligations derived
10 from ownership of interests and minerals; or utilizing or
11 pooling of interest in minerals; and

12 (13) for the purposes of this subsection, if
13 the services performed during one-half or more of any pay
14 period by an individual for the person employing the individual
15 constitute employment, all the services of the individual for
16 the period shall be deemed to be employment but, if the
17 services performed during more than one-half of any such pay
18 period by an individual for the person employing the individual
19 do not constitute employment, then none of the services of the
20 individual for the period shall be deemed to be employment. As
21 used in this paragraph, the term "pay period" means a period,
22 of not more than thirty-one consecutive days, for which a
23 payment of remuneration is ordinarily made to the individual by
24 the person employing the individual. This paragraph shall not
25 be applicable with respect to services performed in a pay

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1 period by an individual for the person employing the individual
2 where any of such service is excepted by Subparagraph (f) of
3 Paragraph (12) of this subsection;

4 G. "employment office" means a free public
5 employment office, or branch thereof, operated by this state or
6 maintained as a part of a state-controlled system of public
7 employment offices;

8 H. "fund" means the unemployment compensation fund
9 established by the Unemployment Compensation Law to which all
10 contributions and payments in lieu of contributions required
11 under the Unemployment Compensation Law and from which all
12 benefits provided under the Unemployment Compensation Law shall
13 be paid;

14 I. "unemployment" means, with respect to an
15 individual, any week during which the individual performs no
16 services and with respect to which no wages are payable to the
17 individual and during which the individual is not engaged in
18 self-employment or receives an award of back pay for loss of
19 employment. The secretary shall prescribe by rule what
20 constitutes part-time and intermittent employment, partial
21 employment and the conditions under which individuals engaged
22 in such employment are eligible for partial unemployment
23 benefits;

24 J. "state", when used in reference to any state
25 other than New Mexico, includes, in addition to the states of

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1 the United States, the District of Columbia, the commonwealth
2 of Puerto Rico and the Virgin Islands;

3 K. "unemployment compensation administration fund"
4 means the fund established by Subsection A of Section 51-1-34
5 NMSA 1978 from which administrative expenses under the
6 Unemployment Compensation Law shall be paid. "Employment
7 security department fund" means the fund established by
8 Subsection B of Section 51-1-34 NMSA 1978 from which certain
9 administrative expenses under the Unemployment Compensation Law
10 shall be paid;

11 L. "crew leader" means a person who:

12 (1) holds a valid certificate of registration
13 as a crew leader or farm labor contractor under the federal
14 Migrant and Seasonal Agricultural Worker Protection Act;

15 (2) furnishes individuals to perform services
16 in agricultural labor for any other person;

17 (3) pays, either on the crew leader's own
18 behalf or on behalf of such other person, the individuals so
19 furnished by the crew leader for service in agricultural labor;
20 and

21 (4) has not entered into a written agreement
22 with the other person for whom the crew leader furnishes
23 individuals in agricultural labor that the individuals will be
24 the employees of the other person;

25 M "week" means such period of seven consecutive

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1 days, as the secretary may by rule prescribe. The secretary
2 may by rule prescribe that a week shall be deemed to be "in",
3 "within" or "during" the benefit year that includes the greater
4 part of such week;

5 N. "calendar quarter" means the period of three
6 consecutive calendar months ending on March 31, June 30,
7 September 30 or December 31;

8 O. "insured work" means services performed for
9 employers who are covered under the Unemployment Compensation
10 Law;

11 P. "benefit year" with respect to an individual
12 means the one-year period beginning with the first day of the
13 first week of unemployment with respect to which the individual
14 first files a claim for benefits in accordance with Subsection
15 A of Section 51-1-8 NMSA 1978 and thereafter the one-year
16 period beginning with the first day of the first week of
17 unemployment with respect to which the individual next files
18 such a claim for benefits after the termination of the
19 individual's last preceding benefit year; provided that at the
20 time of filing such a claim the individual has been paid the
21 wage required under Paragraph (5) of Subsection A of Section
22 51-1-5 NMSA 1978;

23 Q. "agricultural labor" includes all services
24 performed:

25 (1) on a farm, in the employ of a person, in

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1 connection with cultivating the soil or in connection with
2 raising or harvesting an agricultural or horticultural
3 commodity, including the raising, shearing, feeding, caring
4 for, training and management of livestock, bees, poultry and
5 fur-bearing animals and wildlife;

6 (2) in the employ of the owner or tenant or
7 other operator of a farm, in connection with the operation,
8 management, conservation or maintenance of the farm and its
9 tools and equipment, if the major part of the service is
10 performed on a farm;

11 (3) in connection with the operation or
12 maintenance of ditches, canals, reservoirs or waterways used
13 exclusively for supplying and storing water for farming
14 purposes when such ditches, canals, reservoirs or waterways are
15 owned and operated by the farmers using the water stored or
16 carried therein; and

17 (4) in handling, planting, drying, packing,
18 packaging, processing, freezing, grading, storing or delivery
19 to storage or to market or to a carrier for transportation to
20 market any agricultural or horticultural commodity but only if
21 the service is performed as an incident to ordinary farming
22 operations. The provisions of this paragraph shall not be
23 deemed to be applicable with respect to service performed in
24 connection with commercial canning or commercial freezing or in
25 connection with any agricultural or horticultural commodity

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1 after its delivery to a terminal market for distribution for
2 consumption.

3 As used in this subsection, the term "farm" includes
4 stock, dairy, poultry, fruit, fur-bearing animal and truck
5 farms, plantations, ranches, nurseries, greenhouses, ranges and
6 orchards;

7 R. "payments in lieu of contributions" means the
8 money payments made into the fund by an employer pursuant to
9 the provisions of Subsection B of Section 51-1-13 NMSA 1978 or
10 Subsection E of Section 51-1-59 NMSA 1978;

11 S. "department" means the labor department; and

12 T. "wages" means all remuneration for services,
13 including commissions and bonuses and the cash value of all
14 remuneration in any medium other than cash. The reasonable
15 cash value of remuneration in any medium other than cash shall
16 be established and determined in accordance with rules
17 prescribed by the secretary; provided that the term "wages"
18 shall not include:

19 (1) subsequent to December 31, 1977, that part
20 of the remuneration in excess of the base wage as determined by
21 the secretary for each calendar year. The base wage upon which
22 contribution shall be paid during any calendar year shall be
23 sixty percent of the state's average annual earnings computed
24 by the division by dividing total wages reported to the
25 division by contributing employers for the second preceding

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1 calendar year before the calendar year the computed base wage
2 becomes effective by the average annual employment reported by
3 contributing employers for the same period rounded to the next
4 higher multiple of one hundred dollars (\$100); provided that
5 the base wage so computed for any calendar year shall not be
6 less than seven thousand dollars (\$7,000). Wages paid by an
7 employer to an individual in his employ during any calendar
8 year in excess of the base wage in effect for that calendar
9 year shall be reported to the department but shall be exempt
10 from the payment of contributions unless such wages paid in
11 excess of the base wage become subject to tax under a federal
12 law imposing a tax against which credit may be taken for
13 contributions required to be paid into a state unemployment
14 fund;

15 (2) the amount of any payment with respect to
16 services performed after June 30, 1941 to or on behalf of an
17 individual in the employ of an employing unit under a plan or
18 system established by the employing unit that makes provision
19 for individuals in its employ generally or for a class or
20 classes of individuals, including any amount paid by an
21 employing unit for insurance or annuities, or into a fund, to
22 provide for any payment, on account of:

23 (a) retirement if the payments are made
24 by an employer to or on behalf of an employee under a
25 simplified employee pension plan that provides for payments by

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1 an employer in addition to the salary or other remuneration
2 normally payable to the employee or class of employees and does
3 not include any payments that represent deferred compensation
4 or other reduction of an employee's normal taxable wages or
5 remuneration or any payments made to a third party on behalf of
6 an employee as part of an agreement of deferred remuneration;

7 (b) sickness or accident disability if
8 the payments are received under a workers' compensation or
9 occupational disease disablement law;

10 (c) medical and hospitalization expenses
11 in connection with sickness or accident disability; or

12 (d) death; provided the individual in
13 its employ has not the option to receive, instead of provision
14 for the death benefit, any part of such payment, or, if such
15 death benefit is insured, any part of the premiums or
16 contributions to premiums paid by the individual's employing
17 unit and has not the right under the provisions of the plan or
18 system or policy of insurance providing for the death benefit
19 to assign the benefit, or to receive a cash consideration in
20 lieu of the benefit either upon the individual's withdrawal
21 from the plan or system providing for the benefit or upon
22 termination of the plan or system or policy of insurance or of
23 the individual's service with the employing unit;

24 (3) remuneration for agricultural labor paid
25 in any medium other than cash;

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1 (4) a payment made to, or on behalf of, an
2 employee or an employee's beneficiary under a cafeteria plan
3 within the meaning of Section 125 of the federal Internal
4 Revenue Code of 1986;

5 (5) a payment made, or benefit furnished to or
6 for the benefit of an employee if at the time of the payment or
7 such furnishing it is reasonable to believe that the employee
8 will be able to exclude the payment or benefit from income
9 under Section 129 of the federal Internal Revenue Code of 1986;

10 (6) a payment made by an employer to a
11 survivor or the estate of a former employee after the calendar
12 year in which the employee died;

13 (7) a payment made to, or on behalf of, an
14 employee or the employee's beneficiary under an arrangement to
15 which Section 408(p) of the federal Internal Revenue Code of
16 1986 applies, other than any elective contributions under
17 Paragraph (2)(A)(i) of that section;

18 (8) a payment made to or for the benefit of an
19 employee if at the time of the payment it is reasonable to
20 believe that the employee will be able to exclude the payment
21 from income under Section 106 of the federal Internal Revenue
22 Code of 1986; or

23 (9) the value of any meals or lodging
24 furnished by or on behalf of the employer if at the time the
25 benefit is provided it is reasonable to believe that the

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1 employee will be able to exclude such items from income under
2 Section 119 of the federal Internal Revenue Code of 1986. "

3 Section 13. APPROPRIATION. --Two million five hundred
4 ninety-two thousand four hundred one dollars (\$2,592,401) is
5 appropriated from the Reed Act distribution fund, consisting of
6 funds made available to the state of New Mexico on March 13,
7 2002 pursuant to Section 209 of the federal Temporary Extended
8 Unemployment Compensation Act of 2002, to the unemployment
9 compensation administration fund for expenditure in fiscal
10 years 2003 through 2007 to implement the provisions of this
11 act. Any unexpended or unencumbered balance remaining at the
12 end of fiscal year 2007 shall revert to the Reed Act
13 distribution fund.

14 Section 14. REPEAL. --Laws 2000, Chapter 3, Sections 1 and
15 2 are repealed.

16 Section 15. EFFECTIVE DATE. --

17 A. The effective date of the provisions of Section
18 13 of this act is April 1, 2003.

19 B. The effective date of the provisions of Sections
20 2, 3, 5 and 6 of this act is January 1, 2004.

21 C. The effective date of the provisions of Sections
22 8 through 12 of this act is the earliest of the following:

23 (1) June 30, 2007; or

24 (2) the date that the unemployment
25 compensation fund is less than three and three-fourths percent

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1 of total payrolls pursuant to the computation provided in
2 Paragraph (1) of Subsection I of Section 51-1-11 NMSA 1978.

3 Section 16. EMERGENCY.--It is necessary for the public
4 peace, health and safety that this act take effect immediately.

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